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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~441~~ 172.

MARY E. H. GWIN AND MIERS F. TRUETT,
APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 10, 1900.

(17,926.)

a UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, nineteen hundred, pursuant to an appeal by Mary E. H. Gwin and Miers F. Truett, intervenors, appellants, and The United States of America, *is* respondent, in an appeal from the district court of the United States for the northern district of California in a proceeding entitled The United States of America against Vicente Peralta and others, to show cause, if any there be, why the order and judgment in the said cause entered July 30th, 1900, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 7th day of September, in the year nineteen hundred.

JOHN J. DE HAVEN, *Judge.*

b [Endorsed:] W. Land case No. 100. In the district court of the United States for the northern district of California. United States of America *vs.* Vicente Peralta and others. M. E. H. Gwin & M. F. Truett, intervenors. Citation. Service of the within citation admitted this 7th day of September, 1900. Frank L. Coombs, United States attorney for California, northern district. Filed Sep. 7, 1900. G. E. Morse, clerk.

1 In the District Court of the United States for the Northern District of California.

THE UNITED STATES
vs.
VICENTE PERALTA and Others. } No. 100. Land Cases.

To the hon. the district court of the United States for the northern district of California:

The petition of Mary E. H. Gwin and Miers F. Truett, intervening in this proceeding for their respective interests therein, by leave of the court first had and obtained, respectfully shows:

That heretofore, to wit, on or about the second day of February, in the year 1848, the United States of America entered into a contract in writing with the Mexican Republic for the sale by the latter and purchase by the United States of the Territory of Mexico lying north of a line commencing in the gulf of Mexico three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of

2 New Mexico; thence westwardly along the whole southern boundary of New Mexico, which runs north of the town called Paso to its western termination; thence northward along the western line of New Mexico until it intersects the first branch of the River Gila (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch and thence in a direct line to the same); thence down the middle of said branch and of the said river until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific ocean.

Upon the express condition that in the said Territory Mexicans not electing to remain such shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property.

For which property so purchased the United States undertook to pay to the Mexican Republic the sum of fifteen million dollars ($15,000,000).

Which contract was incorporated in a writing known as the treaty of Guadalupe Hidalgo, which was duly executed by
3 the representatives of the contracting parties, and was proclaimed and made public on the 4th day of July, in the said year 1848, by the President of the United States, "to the end that the same and every clause and article thereof might be observed and fulfilled by the United States and the citizens thereof."

That after the said purchase was made a conference was held in the city of Queretaro between the Hon. N. Clifford and Hon. A. H. Sevier, representing the United States, and His Excellency Don Luis de la Rosa, minister of foreign affairs of the Republic of Mexico, thereunto duly authorized by their respective governments, touching certain proposed articles in the treaty of Guadalupe Hidalgo suppressed by the American Government, at which it was mutually agreed:

1. That by suppressing article IX and substituting article III of the treaty of Louisiana it was not intended to diminish in any way what was agreed upon by the aforesaid — IX in favor of the inhabitants of the territories ceded by Mexico.

2. That by suppressing article X it was not intended in any way to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article, preserve the legal values which they may possess, and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.

4 That, conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May, 1846, and in Texas up to the second of March, 1836.

That by force of the said act of cession the United States became

vested with the naked legal title to and right of sovereignty over the whole of said territory.

That thereafter, and on the 3rd day of March, 1851, the United States, in part execution of such agreement on its part, entered into a contract in writing with the grantees of Spain and Mexico, claiming lands in the State of California (situated within the said purchase) by virtue of any right or title derived from the Spanish or Mexican government, requiring that each and every such person should present the same, with the evidence in support thereof, for examination to a board of commissioners provided for in an act of Congress of the United States approved on the said 3rd day of March, in the year 1851, within two years after the date of the act.

That it was thereby provided that it should be the duty of the said board to examine the claim so presented, and the evidence, and such evidence as should be produced on behalf of the United
5 States, and to decide upon the validity of the claim, with an appeal from such decision by either party to the district court of the United States for the district within which the land claimed is situated; which court was required to render judgment upon the pleadings and the evidence adduced and to be adduced, and grant an appeal therefrom, if required by either party, to the Supreme Court of the United States.

That it was further thereby provided that failure on the part of the claimant to so present his claim, or a final rejection of the same by the said board, or on a final decision of the said district or supreme court that the claim is invalid, the lands claimed should be deemed, held, and considered as part of the public domain of the United States.

That it was further hereby provided that for all claims finally confirmed by the said board or by the district or supreme court a patent should issue to the claimant upon his presenting to the General Land Office of the United States an authentic certificate of such confirmation and a plat of survey of the said land, duly certified and approved by the surveyor general of California, upon whom was thereby imposed the duty to cause all private claims which should be finally confirmed to be accurately surveyed, and to furnish plats of the same.

That it was thereby further provided that if the title of the
6 claimant to such lands should be contested by any other person, the contestant might present a petition to the judge of said district, setting forth his title thereto, who might, after a hearing, enjoin the issuance of a patent for a reasonable time, to enable the contestant to obtain a decision establishing the superiority of his title.

That it was further thereby provided that the final decree so to be rendered by the said board or the said district or supreme court should be conclusive between the United States and the said claimants.

That long prior to the execution of the said contract of sale between the United States and the Mexican Republic, and about the year 1820, the Spanish and Mexican authorities of Alta California

granted unto Luis Peralta the rancho of San Antonio within the limits of the present State of California.

And the proper authorities of Mexico thereupon delivered to the said Luis Peralta the seizin and possession of the said rancho.

And by its decree and judgment of juridical possession thereupon duly given and made the proper authorities of Mexico invested the said Luis Peralta with the seizin and possession of the lands

7 of said rancho by the following boundaries:

Commencing on the bay of San Francisco at a point where there are close to the bay the two cerritos of San Antonio, thence eastwardly along the northern base of said cerritos to the comb or crest of the coast range of mountain, or the sierra, which line constitutes its northern boundary, thence for its eastern boundary a line running along the comb or crest of the said sierra until it reaches the eastern extremity of a line beginning on the bay at the mouth of San Leandro creek and running up said creek, which is the southern boundary, and by the bay of San Francisco from the mouth of San Leandro creek to the beginning of the northern boundary line, which line along the bay constitutes its western boundary.

That at the time when the said contract of sale by the Mexican Republic to the United States was entered into the said Luis Peralta was the owner in fee and in possession of the whole of the said rancho under such grant by the boundaries specified in said act of juridical possession.

That by operation of the treaty aforesaid the said Luis Peralta became and was a citizen of the United States before the admission of the State of California into the Union.

That on or about the ninth day of September, in the year

8 1850, the State of California was admitted into the Union on an equal footing with the original States in all respects whatever.

That by operation of the constitution of the State of California the said Luis Peralta became and was a citizen of said State upon its admission into the Union.

That on or about the — day of ——, in the year 1851, the said Luis Peralta died seised and possessed of the said rancho of San Antonio, leaving him surviving his four sons, Domingo, Vicente, Antonio Maria, and Ignacio, and leaving a will, whereby he devised to them the whole of the said rancho of San Antonio.

That thereafter, to wit, on the 21st day of January, in the year 1852, the said Antonio Peralta, Vicente Peralta, Ignacio Peralta, and Domingo Peralta, claiming lands in California by virtue of a right and title derived from the Spanish and Mexican governments, to wit, under and by virtue of the said grant to their father, Luis Peralta, presented to and filed with the board of United States land commissioners constituted under the said act of Congress of March 3rd, 1851, and in pursuance of the requirements of the said act, their claim, in writing, for the lands of the rancho of San Antonio, in said State, alleging such grant by the boundaries aforesaid as the source of their title, together with such documentary evidence and

9 testimony of witnesses as the petitioners relied upon in support of their said claim, and thereby accepted the terms and

conditions of the said last-mentioned agreement of March 3rd, 1851, of the United States with their deceased father.

Which said petition is in the words and figures following, to wit:

To the hon. the board of commissioners for settling private land claims in California:

The petition of Vicente, Antonio, Ignacio, and Domingo Peralta, residents of the county of Contra Costa, State of California, respectfully submit to your hon. board the accompanying title to the rancho of land called San Antonio, granted to Luis Peralta (through whom your petitioners claim by will) on the 16th August, 1820, by Don Pablo Vicente de Sola, lieut. col. of the royal armies and political and military gov. of California, whose authority to grant lands was derived from the King of Spain by a royal cedula of 24 October, 1781, approving the regulations and instructions for the government of the Californias, drawn by Don Felipe de Neve, dated June 1, 1779. The quantity of land contained in said rancho is not known, it being granted by natural bounds, as follows, to wit: On the north by Don Castro's rancho or a little mountain called San Antonio, on the east by the mountain range, on the west by the coast, and on the south by the creek called San Leandro. No conflicting claim to
10 said rancho is known to your petitioners.

Further, your petitioners represent that they, as well as their father before them, have had long possession of said land, which they are ready to prove by living witnesses.

Your petitioners further represent that the said will under which they claim is of record in the county of Santa Clara, a copy of which they pray to be made part of this petition as soon as it can be obtained, so also the accompanying abstract of title and note of argument.

All which is respectfully submitted.

IRVING & ROSE.

Endorsed: No. 4. Petition of Vicente Peralta *et al.*, rancho of San Antonio. Filed Jan'y 21, 1852. J. P. Carr, sec'y. Recorded in Journal A, at pages 38 and 39.

Which petition and claim became the petition and claim in case No. 4 upon the docket of said board of land commissioners.

That the law firm of Irving & Rose was composed of Joseph K. Irving & J. K. Rose.

11 That thereafter and on the second day of August, in the year 1852, the said board made an order in said case No. 4 in the words and figures following, to wit:

On motion of the counsel of Ignacio Peralta and Antonio Peralta, ordered that their names be stricken out from the petition No. 4, and their claim rest on the several petitions Nos. 273 and 274 on the docket of this board for portions of the Rancho San Antonio, and that this be done without prejudice, and that the testimony hereto-

fore taken in No. 4 shall, so far as applicable, apply to all the said petitions.

That no claim in said case No. 4, other than the one above set forth, was presented to said board.

12 That thereafter the said board, when the said case number 4 was ready for hearing, proceeded to and did examine the claim made in said petition upon such evidence and the evidence produced in behalf of the United States, and did decide upon the validity of the claim, and did certify its decision with the reasons on which it was founded, and did also cause to be prepared two certified transcripts of their proceedings and decision and of the papers and evidence on which the same were founded, including the said petition in said case No. 4, and did, in due time, file one of such transcripts with the clerk of the district court of the United States for the northern district of California, in which court it was filed on the 23rd day of September, in the year 1854, and did transmit the other of said transcripts to the Attorney General of the United States.

That afterwards and after due proceedings had in said district court said court, in its land case No. 100, did duly review the said decision of said commissioners, and did affirm the validity of the claim of said petitioners as set forth in said petition, and did render judgment upon the pleadings and evidence in the case, affirming the validity of said grant by its decree, which decree as to such affirmance was duly given and made on the 26th day of January, in the year 1855.

13 Which decree is in the words and figures following, to wit:

Title of Court and Cause.

This cause *coming* on this day to be heard upon the petition and answer, the certified transcript of the proceedings and decision of the board of commissioners on private land claims in California, and of the papers and evidence on which the same are founded, and upon the further evidence taken by the order of this court, and was argued by counsel.

In consideration whereof this court doth order, adjudge, and decree—

That the claim presented in the petition filed in this case for the place called San Antonio is valid to the whole extent of its bounds, to wit, having for its northern boundary a line commencing on the bay of San Francisco at a point where there are close to the said bay the two cerritos, as described in the first possession given by Martinez to Louis Peralta on the 16th of August, 1820, running from the said bay eastwardly along by the southern base of the cerritos of San Antonio up a ravine, at the head of which there is a large rock or monument looking to the north, described in evidence as the Sugar-loaf rock; thence by the southern base of said rock to the comb or crest of the coast range of mountains or the sierra; thence for the western boundary a line running along the comb of the said sierra until it reaches the eastern extremity of a line beginning on

14 the said bay of San Francisco at the mouth of the deep creek of San Leandro, and running eastwardly up the said creek to

its head or source in the sierra and to the comb or crest thereof, which last line is the southern boundary of the land of San Antonio, and by the said bay of San Francisco from the mouth of the said deep creek of San Leandro up to the beginning of the said line which has been described as the northern boundary of said tract, which line along the bay constitutes its western boundary.

And it is hereby further adjudged, ordered, and decreed that there be confirmed to the said Domingo and Vicente Peralta the northern portion of said land of San Antonio, bounded as follows: On the north by the northern boundary of said tract of San Antonio, as above described, on the east by the comb of the said sierra, on the west by the bay of San Francisco, and on the south by a ravine a short distance south of the buildings in the town of Oakland, on the north of which ravine there is a small house in sight of the public road, being the line of division between this land and the land of Antonio Peralta, which line extends from the said bay to the most eastern boundary of the rancho of San Antonio.

(Signed) ISAAC S. K. OGIER,
U. S. District Judge for the Southern Dist. of Cal., Sitting in the Northern Dist. pro Tem.

15 That thereafterwards and upon the motion of the attorney for the United States the said district court granted to the United States an appeal from the said decree to the Supreme Court.

That thereafterwards and in due time the attorney general of the United States gave and filed in the said district court a notice that such appeal would be prosecuted by the United States upon the sole question whether the said grant should be affirmed in its entirety.

16 That thereafterwards and at its December term, in the year 1856, the Supreme Court of the United States, after hearing and due deliberation, gave and rendered its decision affirming the validity of the said grant to said Don Luis Peralta in its entirety, by the boundaries and description of the said rancho therein contained and expressed, except as to its northern boundary, which was adjudged to run along the northern instead of the southern base of the cerritos of San Antonio, and did remand the case to the said district court for further proceedings in conformity with the opinion and decision of the Supreme Court.

17 Your petitioners further show that thereafter and on the 30th day of November, in the year 1859 (filed December 1, 1859), the said district court duly made and rendered its order and decree amending its said decree of January 26, 1855, so as to make it conform to the opinion and decision of the Supreme Court, and to correct a clerical error therein made by said district court.

Which said last-mentioned order and decree is in the words and figures following, to wit:

Title of Court and Cause.

It satisfactorily appearing to the court that in the decree of this court, heretofore entered in this cause and affirmed on appeal by the Supreme Court of the United States, a clerical error has intervened, and that the said decree is repugnant and inconsistent with itself, and it further appearing to this court that the northern boundary of the tract of land confirmed to said claimants is erroneously described as running by the southern base of the cerrito therein mentioned, whereas the said northern boundary, as declared and adopted by the Supreme Court of the United States in the opinion of said court in this case, is "the rivulet which issues from the mountain range, and runs along the foot of said cerrito of San Antonio, and at the entrance of a little gulch there is a rock elevating itself in the form of a monument and looking towards the

18 north," and it appearing to this court that the rivulet so adopted as the said northern boundary runs along the northern base of the said cerritos of San Antonio, and not along the southern base thereof; and it further appearing that the ridge of mountains constituting the eastern boundary of said rancho is erroneously denominated its western boundary, as is manifest from the face and terms of the decree itself:

It is, on motion of the counsel for the parties interested in said claim, and the district attorney being present and not objecting thereto:

Ordered that the said decree —, and the same hereby is, construed and amended by substituting the word "northern" for "southern" where the word southern the first time occurs in said decree, and the word "eastern" for "western" where the latter word first occurs in said decree.

(Signed) OGDEN HOFFMAN,
U. S. Dist. Judge.

(Endorsed:) Filed December 1, 1859. W. H. Chevers, clerk.

Your petitioners further show that, as they are advised and believe, the said decree so amended became and was the final decree in said case within the meaning of the said contract and act of Congress of March 3rd, 1851.

That such decree was duly given and made, and is of force, never having been appealed from, reversed, modified, annulled, or set aside.

19 Your petitioners further show that no grant of said Rancho San Antonio or of any part thereof was made by the Spanish or Mexican government of California to Domingo Peralta or Vicente Peralta, or to them jointly or in common.

That no claim under any such grant was ever presented to the said board or to the said district court, nor was proof of any such grant or claim made before the said board or court.

That no survey of the said grant or of the claim made to said board in said case No. 4 was ever made until a survey was made by the surveyor general of the United States for California and ap-

proved plat thereof furnished to the confirmees in the year 1895, as hereinafter stated and as required by the terms and provisions of the said contract and act of Congress of March 3rd, 1851.

Your petitioners further show that afterwards and on the 23rd day of July, in the year 1866, the Congress of the United States passed an act entitled An act to quiet land titles in the State of California.

That by the 8th section of said act it was provided that in the event that no survey of the said confirmed grant had been,
20 before the passage of said act, requested by said confirmees, nor had any such survey been requested within ten months after its passage, it was thereby made the duty of the surveyor general of the United States for California, as soon as practicable thereafter, to cause the lines of the public surveys to be extended over such land, and to set off in full satisfaction of the grant the quantity of land confirmed in the said final decree and as nearly as could be done in conformity with such decree.

Your petitioners further show that no survey of the grant of the San Antonio rancho confirmed in this proceeding had been requested by the confirmees or their assigns before the passage of said act, nor had any survey thereof been requested by them within ten months after the passage of said act, nor had any such survey been made, and it thereby became the duty of the surveyor general of the United States for California, as soon as practicable from the expiration of ten months from the passage of said act, to set off in full satisfaction of such grant and according to the lines of the public surveys the quantity of land confirmed in the final decree herein as nearly as could be done in accordance with such final decree.

That afterwards and on or about the 25th day of November, in the year 1895, and as soon as practicable after the passage of the said act of July 23rd, 1866, the said surveyor general duly made, approved, and certified a plat of the survey of the said rancho
21 of San Antonio in accordance with and in part execution of the said final decree of this court, and furnished the same to your petitioners as required by law.

Your petitioners here further show that they are interested in the lands of the said rancho under the said claimants and confirmees, and that their respective title thereto was derived by mesne conveyances from the said confirmees.

22 Your petitioners further show that on the second day of August, in the year 1853, Vicente Peralta, one of said confirmees, and his wife granted to Richard P. Hammond, John C. Hays, John Caperton, and Lucien Hermann, for a valuable consideration, all that portion of the said rancho lying south of a line running from a ravine or gully in the range of mountains of the Contra Costa south sixty-three degrees west magnetic to the shore of the bay of San Francisco, said line following the same direction to the center of Yerba Buena island or Goat island, and being the dividing line between the lands of Domingo Peralta and said Vicente Peralta, on the northeast the said ridge of mountains of Contra Costa to a gulch or ravine called de la Indita, on the southeast by said ravine

to the estuary of San Antonio, on the south and southwest the bay of San Francisco.

With certain exceptions and reservations, which do not affect the lands and premises here in question.

Which conveyance was in writing and recorded in Liber A of Deeds, page 202, in the recorder's office of the county of Alameda.

And that afterwards and on the 10th day of November, in the year 1855, the said Richard P. Hammond conveyed to your petitioner Mary E. H. Gwin, for a valuable consideration, twenty-five undivided one thousand and one parts of the same tract of land.

23 Which conveyance was in writing, and was recorded in said recorder's office, in Liber E of Deeds, at page 44.

Your petitioners further show that on the third day of November, in the year 1855, the said Richard P. Hammond conveyed to Henry B. Truett, for a valuable consideration, (twenty-five thousand) 25,000 (two hundred thousand and two hundred) 200,200 parts of the same tract of land.

Which conveyance was in writing, and was recorded in said recorder's office, in Liber D of Deeds, at page 753.

That the said Henry B. Truett died seised of the said lands intestate in the year ——, leaving his wife, Harriet Truett, and his only child, your petitioner, the said Miers F. Truett, his only heirs-at-law, and thereafter and in the year 1878 the probate court in and for Alameda county, after due proceedings had, by its decree duly given and made, duly distributed all the property whereof the said Henry B. Truett died seised or possessed to the said Harriet Truett and your said petitioner, Miers F. Truett, in equal shares.

Your petitioners further show that thereafter the said plat of survey was, on or about the second day of September, in the year 1896, presented to the honorable the Commissioner of the General Land Office of the United States, at the city of Washington, District of Columbia, together with duly certified copies of said final

23½ decree and an authentic certificate of such confirmation by your petitioner Mary E. H. Gwin and one Francisco Sanjurjo, since deceased, together with a deraignment of their respective titles thereunder from the said claimants, confirmees, Vicente, Domingo, Antonio, and Ignacio Peralta, with a request that he issue, or cause to be issued, to said claimants, confirmees, Vicente Peralta and others, a patent for the lands of the rancho, in accordance with such plat of survey, in due form of law.

Your petitioners further show that the said commissioner, whose duty it was to prepare and cause to be properly signed and issued, upon receipt of such plat of survey and certificate of confirmation, a patent to the said claimants, confirmees, for the said lands, although often requested, has neglected and refused, and still does neglect and refuse, and did on the 22nd day of September, in the year 1896, expressly refuse to prepare and issue, or cause to be issued, such patent, to the great damage of petitioners.

24 Your petitioners further show that the said Commissioner set forth in writing by the hand of the Hon. E. F. Best, As-

sistant Commissioner, his reasons for such refusal, as is shown in Exhibit "A" attached to and made a part of this petition.

Your petitioners further show that upon reconsideration the said Commissioner set forth in writing by the hand of the Hon. F. W. Mondell, Assistant Commissioner, his further reason for such refusal, as is shown in Exhibit "B" attached to and made a part of this petition.

And thereafter the Secretary of the Interior, having been duly requested by your petitioner- to cause to be prepared and issued such patent for the said lands, did refuse so to do, assigning as his reasons for such refusal the matters so assigned by the said Assistant Commissioner, F. W. Mondell.

Your petitioners further show that the act of the said surveyor in making and certifying the said plat of survey of November 26, 1895, was the act and deed of the said The United States; that the same was made in conformity with the requirements of said contract and act of Congress of March 3d, 1851, and said act of July 3d, 1866; that the said plat was accepted by your petitioners on behalf
25 of the said claimants, confirmees; that the same has never been appealed from, reversed, or set aside.

And your petitioners pray leave to refer to the said plat of survey now on file and of record in the proper land office and in the Department of the Interior of the United States, or to a certified copy thereof, and to make the same a part of this their petition.

Your petitioners further show that on or about the said second day of September, in the year 1896, at the city of Washington, District of Columbia, there was duly served upon the Hon. S. W. Lamoureux, Commissioner of the General Land Office of the United States, copies of the said several decrees of this court of January 26th, 1855, and of November 30th, 1859 (filed December 1, 1859), duly certified by the clerk of this court under his hand and the seal of said court.

And that at the same time there was duly presented to the said Commissioner a plat of the survey of the said Rancho San Antonio duly certified and approved by the surveyor general of California, to wit, the said plat of survey so certified and approved by the said surveyor in the year 1895, with a request that he prepare or cause to be prepared and issued to the confirmees a patent for the lands of said rancho in accordance with said decree and plat of survey, which was refused.

26 Petitioners further show that, as they are advised and believe, the claimants conformed to all the requirements of the said contract and performed all the conditions imposed upon them by the said act of Congress of March 3d, 1851.

But that the United States has neglected and refused to abide by and perform the said contract on her part or to execute the said judgment against her in favor of said claimants and your petitioners, although often requested so to do.

Your petitioners further show that it is sometimes given out and pretended by the United States and by the Commissioner of the General Land Office of the United States that the said district court,

by its order or decree made and entered on the 30th day of August, in the year 1859, did order and direct the surveyor general of the United States for California to bring into court a plat of survey of the said rancho of San Antonio, and that the said surveyor general did, in obedience to said order and decree, return into court a plat of such survey.

That thereafter, and after the entry of said decree of November 30, 1859 (filed December 1, 1859), the said court did cause such plat of survey of said rancho to be returned to said surveyor general, with instructions to conform his said survey to the said last-mentioned decree.

That thereafter, and on or about the 10th day of August,
27 1860, the said surveyor did return into court a corrected plat of the survey of the said rancho.

That thereafter the said district court did, by its order and decree made and entered June 5, 1871, modify the plat of survey of said rancho.

That the said surveyor did thereupon modify the said plat of survey of said rancho.

That the said court did thereafter, and on the 4th day of August, in the year 1871, make its order approving such modified survey of said rancho.

That the said court did thereafter allow an appeal therefrom to the circuit court of the United States for the ninth judicial circuit.

That the said circuit court did thereafter make an order affirming said decree and remanding the case to the said district court.

And do further give out and pretend that thereafter the Commissioner of the General Land Office of the United States did issue to the said Domingo and Vicente Peralta a patent of the United States for the lands contained in said modified survey, and that such
28 patent was in full execution and performance of the said decrees of January 26, 1855, and of the 30th day of November, 1859 (filed December 1, 1859).

All of which pretences are, as your petitioners are advised and believe, wholly unfounded in fact and in the law and insufficient to defeat the right of your petitioners to the final execution of said last-mentioned decrees.

Your petitioners further show that the said district court did, on or about the 30th day of August, in the year 1859, make its certain order and decree in this case (land case No. 100) in the words and figures following, to wit:

Title of Court and Cause.

"On application of Tully R. Wise, Esq., acting U. S. attorney, it is ordered that the surveyor general of the United States for the State of California return to this court the plat of the survey approved by him of part of the rancho of San Antonio, No. 1, land commission."

Endorsed: Filed Aug. 30th, 1859. W. H. Chevers, clerk.

Your petitioners further show that prior to the making of such order the said surveyor general had appointed J. T. Stratton his deputy for the purpose of surveying the northern portion of said grant, and had, on or about the 8th day of February, in the year 1858, issued to him his letter of appointment and instructions respecting the survey in the words and figures following, to wit:

29

U. S. SUR. GEN. OFFICE,
SAN FRANCISCO, CALIFORNIA, *Feb'y 8th*, 1858.

SIR: Whereas in the claim of Domingo & Vicente Peralta to the northern portion of the lands of San Antonio, hereinafter described, the Supreme Court of the United States has affirmed the decree of the dist. court for the northern district of California confirming said lands to said claimant, I have thought proper to appoint you my deputy in this special case for the execution of the final survey thereof.

The U. S. dist. court has confirmed the entire rancho of San Antonio to the following effect: "The court doth order, adjudge, and decree that the claim presented in the petition filed in this case for the place called San Antonio is valid to the whole extent of its bounds, to wit, having for its northern boundary a line commencing on the bay of San Francisco at a point where there are close to the said bay the two cerritos as described in the first possession given by Martinez to Luis Peralta on the 16th of August, 1820, running from the said bay eastward along the southern base of the cerrito of San Antonio up a ravine, at the head of which there is a large rock or monument, looking to the north, described in evidence as the Sugar-loaf rock; thence by the southern base of said rock to the comb or crest of the coast range of mountains or the sierra; thence, for the western boundary, a line running along the comb of the said

30 sierra until it reaches the eastern extremity of a line beginning on the said bay of San Francisco at the mouth of the deep creek of San Leandro and running eastwardly up the said creek to its head or source in the sierra and to the comb or crest thereof, which last line is the southern boundary of the land of San Antonio, and by the said bay of San Francisco from the mouth of said deep creek of San Leandro up to the beginning of the said line which has been described as the northern boundary of said tract, which line along the bay constitutes the western boundary;" and the confirmation to Domingo and Vicente Peralta is as follows:

"And it is hereby further ordered, adjudged, and decreed that there be confirmed to the said Domingo and Vicente Peralta the northern portion of said land of San Antonio bounded as follows: On the north by the northern boundary of said tract of San Antonio as above described, on the east by the comb of the said sierra, on the west by the bay of San Francisco, and on the south by a ravine a short distance south of the buildings of the town of Oakland, on the north of which ravine there is a small house in sight of the public road, being the line of division between this land and the land of Antonio Peralta, which line extends from the said bay to the most eastern boundary of the rancho of San Antonio."

You will survey the above-mentioned claim of Domingo and Vicente Peralta to the northern portion of the rancho of San Antonio in accordance with the call of the decree of the court above set forth. For a more particular description of the manner
31 you are to proceed in the execution of said survey, I refer you to general instructions to deputy surveyors, dated January, 1858. In accordance with instructions received from the General Land Office you are forbidden to receive any compensation whatever in any way from the claimants of this rancho for surveying the exterior boundaries thereof.

Respectfully, J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal.

J. T. Stratton, Esq., dep. sur.

Endorsed: Filed May 1, 1861. W. H. Chevers, clerk.

That thereafter, and on or about the second day of November, in the year 1859, the said surveyor general did return into said court and deliver to the clerk thereof a plat of survey purporting to be a plat of the survey of all that portion of the said rancho of San Antonio which is particularly described as follows, viz:

The northern portion of said land of San Antonio, bounded as follows: On the north by the northern boundary of said tract of San Antonio as above described, on the east by the comb of the said sierra, on the west by the bay of San Francisco, and on the south by a ravine a short distance south of the buildings in the town of Oakland, on the north of which ravine there is a small house in sight of the public road, being the line of division between this land and the land of Antonio Peralta, which line extends
32 from the said bay to the most eastern boundary of the rancho of San Antonio.

That the said plat of survey was certified by the surveyor general in the words and figures following, to wit:

Plan of the northern part of the rancho of San Antonio finally confirmed to Vicente and Domingo Peralta, surveyed, under the orders of the U. S. survey-r general, by J. T. Stratton, dep'y survey-r, February, 1858, containing 18,725.83 acres.

I certify that this is a full, true, and correct copy of the original on file in this office, the location of which has been approved by me.

U. S. surveyor general's office, San Francisco, Cala., October 21st, 1859.

J. W. MANDEVILLE,
U. S. Sur'r Gen'l, Cala.

That, as your petitioners are also informed and believe, the United States excepted to such survey, and filed exceptions thereto in the words and figures followiug, to wit:

Title of Court and Cause.

And now come the United States, by their acting attorney, Tully R. Wise, and except to the survey of the land claims in this case, made under final decree, the location of which was approved
33 by the U. S. surveyor general for California, and a certified copy of the plat whereof was filed in this court, pursuant to its order, on the 2d day of November, A. D. 1859.

And the United States aver:

1st. That the said survey is erroneous because the land embraced within its lines is of greater extent than that confirmed by said final decree.

2nd. That the said survey is erroneous because the said final decree directs the northern line to be run in a specific manner and from one certain natural object to another, whereas the northern line of said survey has been run so as to include a large quantity of land north of the line fixed by said final decree, disregarding the call of the said final decree for a certain rock called "Sugar-loaf rock," and substituting therefor another and a different rock not mentioned or called for in said final decree.

Wherefore the United States pray that the said approved survey be set aside as erroneous, and that the surveyor general of the United States for California be directed to cause a resurvey of the said land to be made in conformity with the true intent and meaning of said final decree.

San Francisco, Nov. 22, 1859.

TULLY R. WISE,
Acting U. S. Att'y.

Endorsed: Service of a copy of the within exceptions is hereby admitted. Nov. 23d, '59. H. P. Irving. Filed Nov. 23, 1859. W. H. Chevers, clerk.

That thereafter, and on the 3d day of December, in the
34 year 1859, the said district court made an order in said case in the words and figures following, to wit:

Title of Court and Cause.

It appearing to the court that a final survey in the above-entitled cause has been returned to this court, and that since such survey was made the decree in this case has been corrected of certain clerical errors, as is particularly shown in the order for that purpose, entered December 1, 1859, it is ordered that the said survey be returned to the surveyor general in order that he may make the same to conform to the decree herein as amended by the said order of December first, saving to the United States and other parties entitled to be heard the right hereafter to except to the said order of December 1, 1859, and to the survey which may be made under it.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed Dec. 3, 1859. W. H. Chevers, clerk.

That afterward, and on or about the tenth day of August, in the year 1860, the said surveyor general returned into court a plat of survey purporting to be a corrected plat of such survey of the said portion of said rancho, containing 19,143.86 acres.

Your petitioners further show that thereafter, and on or about the eighth day of October, in the year 1860, Horace W. Carpentier,
35 one of the attorneys of this court, filed in this court in this case his affidavit of intervention in the words and figures following, to wit:

Intervention of H. W. Carpentier & Others.

Title of Court and Cause.

Horace W. Carpentier, being duly sworn, says that by an act of the legislature passed May 4, 1852, entitled "An act to incorporate the town of Oakland and to provide for the construction of wharves thereat," the lands lying within the limits of said town as therein described between high tide and ship channel were granted by the State, which was then the owner thereof, to said town; that afterwards, by various mesne conveyances from said town, this affiant and H. N. Carpentier and J. E. Smith became and still are the owners of said lands; that amongst the land so granted by the State and now owned by the said persons, as aforesaid, are so much of the lands lying under the waters of that arm of the bay of San Francisco known as the estuary of San Antonio and on the shores of said estuary of San Antonio up to the highest tide line as are situated on the northerly side of the middle line of said estuary; that the said lands are included in the final survey as approved and returned to this court as parcel of the lands confirmed to the claimants in this case, and that, as this affiant is advised, the said lands never were included within the grant herein confirmed nor the decree of confirmation in this case.

That this affiant and the said Domingo Peralta and Cipri-
36 ano Thurn are the owners, under the grant confirmed in this case, of all the northern part of the tract herein confirmed, lying adjacent to the northern boundary thereof, according to the said approved survey.

That this affiant is the attorney of all the other persons hereinbefore named, and that they and this affiant are interested in the question of said survey.

Wherefore he asks that they may be allowed to intervene for the protection of their rights.

(Signed) H. W. CARPENTIER.

Sworn to and subscribed before me this 8th October, 1860.

W. H. CHEVERS,
U. S. Com.

Endorsed: Filed October 8, 1860. W. H. Chevers, clerk.

That thereafter the said Horace W. Carpentier, H. N. Carpentier, and J. E. Smith filed in this court their exceptions and objections

to the said survey, and the United States came and also filed its objections thereto.

Whereupon, and on or about the 22nd day of November, in the year 1862, the said district court made an order in this case modifying the said survey and plat of survey in the words and figures following, to wit:

37 Title of Court and Cause.

This cause came on to be heard on objections to the official survey and location of the land confirmed to Vicente Peralta and Domingo Peralta, which survey was made by James T. Stratton, U. S. dep. surveyor, and, with the plat thereof, approved March 3, 1860, by J. W. Mandeville, U. S. surveyor general for California, and a certified copy — plat filed herein; and the allegations and proofs having been seen, and counsel for the respective parties heard, and due deliberation had in the premises—

It is now ordered, adjudged, and decreed that all of said objections be, and the same hereby are, overruled and dismissed, and that the said official survey is a just and true location of the lands heretofore confirmed to the claimants herein, and that the same be, and hereby is, approved and confirmed; except as to the objections of the intervenors, Carpentier and others, to the including within said survey of the tide lands lying within the corporate limits of the city of Oakland; which said objections are hereby sustained, and so much of said official survey as lies within said corporate limits is hereby adjudged to be erroneous and ordered to be corrected and modified.

And it is further ordered that the surveyor general of the U. S. for California cause said survey and location to be corrected and reformed so as to conform to this decree, and return the same to this court for its final confirmation and approval.

38 And it is further ordered and adjudged that in correcting and reforming said survey and location hereunder the said surveyor general shall, and he is hereby directed to, follow and adopt as definitely established the official survey already made, without change or modification, from the initial point thereof, designated on said plat "Initial point, stake in mound, A. C. CCC," through all the lines and courses thereof, respectively numbered on said plat from 1 to 93, both inclusive, and also respectively numbered from 113 to 130, inclusive, and that between lines or courses 93 to 113, inclusive, said official survey and location be so changed, corrected, and modified as to run along the inner line of the shore, excluding therefrom and from the lands confirmed the waters of the bay of San Francisco and of the arms thereof and the lands covered thereby as far as the tides ordinarily flow at the full change of the moon.

And it is further ordered that a certified copy of this order be served on the U. S. surveyor general by the U. S. marshal.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed Nov. 22d, 1862. W. H. Chevers, clerk.

Petitioners further show that afterwards, and on or about the 26th day of November, in the year 1866, this court made its further order in this case, amending the said last-mentioned order, in the words and figures following, to wit:

39

Title of Court and Cause.

This cause coming on again to be heard on motion to amend the interlocutory decree entered herein on the 22nd day of November, 1862, so as to conform it to the decision of this court directing a decree, was argued by counsel, and thereupon and in consideration thereof it is ordered, adjudged, and decreed that the said interlocutory decree be, and the same is hereby, amended so as to read as follows: "This cause came on this day to be heard on objections to the official survey and location of the land confirmed to Vicente Peralta and Domingo Peralta, which said survey, a plat of which is on file herein, was made by James T. Stratton, U. S. dep. surveyor, and approved on the 3rd day of March, 1860, by J. W. Mandeville, U. S. surveyor general for the State of California, and was argued by counsel, and thereupon and in consideration thereof it is hereby ordered, adjudged, and decreed that the said official survey be modified between course 93 and course 113 so as to include all the land between said courses down to the ordinary high-water line, and exclude only so much land between said courses as is covered by the tides which happen between the full and change of the moon, twice in twenty-four hours; and it is further ordered, adjudged, and decreed that all other exceptions to the said survey be, and the same hereby are, overruled, and that the said survey in all other respects be, and the same hereby is, approved; and it is further ordered that the surveyor general of the United States for the State of California proceed without delay to cause said modifications to be made, and that he return into this court a certified plat of
40 the survey, so modified as aforesaid, for approval."

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed Nov. 27th, 1866. Geo. C. Gorham, clerk, by Dan'l T. Sullivan, deputy.

Petitioners further show that thereafter, and on or about the 9th day of March, in the year 1869, the said surveyor general returned into court and delivered to the clerk thereof a plat of survey purporting to be a modified plat of survey of said portion of said grant.

That afterward, and on or about the 8th day of March, in the year 1870, Edward R. Carpentier, one of the attorneys of said court, filed his affidavit in said court in this case in the words and figures following, to wit:

Title of Court and Cause.

DIST. OF CALIFORNIA, *ss* :

E. R. Carpentier, being duly sworn, says that the interest of H. W. Carpentier, intervenor herein, in the lands constituting the water front of a part of the premises in question herein and affected by the surveys before the court, has been conveyed and is now held by the Oakland Water Front Company, a corporation duly formed and existing under the laws of California, and that said corporation has an interest in the question of the said surveys.

41 Wherefore deponent prays that it be permitted to intervene for the protection of its said interests.

E. R. CARPENTIER.

Sworn — this 8th day of March, 1870, before me—

EDW'D B. COTTER,
U. S. Comm'r.

Endorsed: Filed March 8th, 1870. E. B. Cotter, clerk, by A. D. Grimwood, D. C.

That thereafter, and on or about the 29th day of March, in the year 1871, the said district court made its certain order in this case in the words and figures following, to wit:

Title of Court and Cause.

It appearing from the verified petition for intervention, now on file in this case, and by the entries in the register of land cases, that Horace W. Carpentier, H. N. Carpentier, James E. Smith, Cipriano Thurn, and Domingo Peralta intervened in this cause in the matter of the survey and location of the lands herein confirmed on the 8 day of October, 1860, and that they have ever since appeared, in person and by counsel, as intervenors in this case, and it further appearing that the order allowing said intervenors to intervene cannot now be found, it is ordered that leave be now given the said persons above named to intervene herein, and that this order be now

42 filed *nunc pro tunc* as of the said date of October 8, 1860.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed March 29th, 1871, *nunc pro tunc*, as of October 8th, 1860. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

And also its certain other order in the words and figures following, to wit:

Title of Court and Cause.

It appearing from the verified petition of intervention in this case and from the entries in the register of land cases that the Oakland Water Front Company, a corporation created and existing under the laws of California, intervened in this case in the matter of the survey and

location of the lands herein confirmed on the 8th day of March, 1870, and that the said company has ever since appeared, by counsel, as intervenor in this case, and it further appearing that the order allowing said intervenor to intervene cannot now be found, it is ordered that leave be now given to the said Oakland Water Front Company to intervene herein, and that this order be now filed, *nunc pro tunc*, as of the said 8th day of March, 1870.

March 29, 1871.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed March 29th, 1871, *nunc pro tunc*, as of March 8th, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

43 Petitioners further show that thereafter and on or about the 5th day of June, in the year 1871, the said court made its certain order in this case further modifying the said last-mentioned survey and plat of survey in the words and figures following, to wit:

Title of Court and Cause.

In the Matter of the Survey and Location of the RANCHO SAN ANTONIO.

This cause came on this day again to be heard upon objections to the modified survey filed in this cause and was argued by counsel; and thereupon and in consideration thereof it is ordered, adjudged, and decreed that said modified survey be, and the same is hereby, set aside as not being in conformity to the decree and directions of this court heretofore entered and given in this cause; and it is further ordered, adjudged, and decreed that the said survey hereby set aside be modified between course ninety-three (93) and course one hundred and thirteen (113), as the same are laid down on the plat, heretofore filed in this cause, of the survey of said lands made by James T. Stratton, United States deputy surveyor, and approved by J. W. Mandeville, United States surveyor general for the State of California, on the 3rd day of March, 1860, so as to include all the lands between said courses down to the ordinary high-water line and exclude only so much land between said courses as is covered

44 by the tides which happen between the full and change of the moon, twice in twenty-four hours.

And it is further ordered, adjudged, and decreed that the surveyor general of the United States for the State of California cause said survey hereby set aside to be modified without delay in accordance with this decree, and return a plat of the same into this court for its approval; and in determining the line of ordinary high water between the courses aforesaid, it is further ordered, adjudged, and decreed that the said surveyor general adopt the line fixed as such by the officers of the United States Coast Survey as the same is delineated on the plat marked Exhibit Rogers No. 1 and described

in the field-notes of said survey, copies of which are on file in this cause.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed June 5th, 1871. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Your petitioners further show that thereafter, and on or about the 26th day of July, in the year 1871, the said surveyor general filed in this court and delivered to the clerk thereof a plat of survey purporting to be a modified survey of said portion of said rancho.

Petitioners further show that thereafter, and on or about the 4th day of August, 1871, this court made its certain order in this case in the words and figures following, to wit:

45 Title of Court and Cause.

In the Matter of the Survey & Location of that Portion of the RANCHO SAN ANTONIO Confirmed in the Above-entitled Cause.

This cause came on this day again to be heard, and it appearing to the court that no exception has been filed to the modified survey heretofore made under the order of this court, and a plat of which was filed in the clerk's office of this court on the 26th day of July, 1871:

Now, therefore, on motion of Williams & Thornton, due notice thereof having been given, it is ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that said modified survey be, and is hereby, approved as a true and correct location of the lands confirmed in the above-entitled cause.

The survey of which confirmation is hereby made contains eighteen thousand eight hundred and forty-eight $\frac{98}{100}$ (18,848.98) acres, and is the same executed under the order and directions of this court by decree entered in this cause on the 5th day of June, 1871, a duly certified plat whereof was filed in the clerk's office of this court, as aforesaid, on the 26th day of July, 1871, and is marked "Approved August 4th, 1871. Ogden Hoffman, dist. judge," and attached hereto as a part of this decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed August 4th, 1871. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

46 That there was attached to the said order the said modified plat of survey of the said northern portion of the said rancho of San Antonio.

Petitioners further show that afterward this court granted an appeal from the said last-mentioned order to the circuit court of the United States for the ninth judicial circuit.

That thereafter such proceedings were had in said circuit court on

such appeal that on or about the 31st day of July, in the year 1874, the said court made its order in the words and figures following, to wit:

At a stated term of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city of San Francisco, on Friday, the 31st day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Present: The Honorable Stephen J. Field, associate justice of the Supreme Court of the United States.

THE UNITED STATES
v.
DOMINGO and VICENTE PERALTA. } No. 981. Decree.

On filing the stipulation of the parties consenting to the dismissal of the appeal herein taken by the United States and the intervenors, upon the terms and for the reasons in the said stipulation mentioned, and upon motion of Horace W. Carpentier, of counsel for the claimants and intervenors, and the United States district attorney being present and consenting thereto, and an order dismissing said appeal having been made and entered in the minutes, on consideration thereof it is ordered, adjudged, and decreed that the appeals to this court in said cause on behalf of the United States and of the intervenors be, and the same are hereby, dismissed. Let the stipulation be filed and made of record in this case.

47

(S'g'd) FIELD, J.

Endorsed: Filed and entered 31st July, 1874. S. S. B. Sawyer, clerk.

That a copy of the said order was certified by the clerk of said court as follows:

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, District of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify the annexed to be a copy of the original decree in the cause therein entitled now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom and of the whole of said original.

48

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 3d day of August, A. D. 1874.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

Which certified copy of said order was returned to and filed in the said district court on the 4th day of August, in the year 1874.

Whereupon and on the said 4th day of August, 1874, the said district court made an order in said case in the words and figures following, to wit:

Title of Court and Cause.

On the production of a certified copy of the decree of the United States circuit court dismissing the appeals to the said circuit court heretofore taken in the case by the United States and the intervenors herein, and on motion of Henry P. Irving, Esq., of counsel for claimants:

It is ordered that the said copy of decree be filed in this court, and that the claimants have leave to proceed under the decree heretofore entered in this court confirming the survey in this case as under final decree.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed August 4th, 1874. Edw'd B. Cotter, clerk,
49 by A. D. Grimwood, deputy clerk.

Your petitioners further show that, as they are informed and believe, the Commissioner of the General Land Office thereupon caused to be prepared and recorded a patent of the United States for that portion of the lands of the said rancho of San Antonio which was included in the said survey.

Your petitioners further show that, as they are informed and believe, neither the United States, the State of California, the said Horace W. Carpentier, H. N. Carpentier, J. E. Smith, nor the said The Oakland Water Front Company ever presented to the said board of land commissioners a claim for the lands or any portion thereof contained in the said grant to Luis Peralta of the said rancho of San Antonio.

Your petitioners further show that, as they are advised and believe, all of the said acts, doings, and pretences respecting the said last-mentioned surveys were and are contrary to equity and good conscience, are in violation of the rights of the confirmees and of your petitioners under the said agreement and act of Congress of March 3d, 1851, contrary to the stipulations and provisions thereof, and manifestly tend to the wrong and injury of your petitioners in the premises.

That, as your petitioners are also advised and believe, all
50 the acts, orders, judgments, and decrees so as aforesaid done, made, and entered in respect of said surveys were *coram non judice* and void.

Your petitioners further show upon and according to their information and belief that the quantity of land embraced in the said plat of survey of November 25, 1895, is forty-six thousand six hundred and eighty-five and forty one-hundredths acres.

That the United States has issued patents for portions only of said grant, as follows:

To Antonio Peralta for sixteen thousand and sixty-seven and seventy-six one-hundredths acres.

Ignacio Peralta for nine thousand four hundred and sixteen and sixty-six one-hundredths acres.

Domingo and Vicente Peralta for eighteen thousand eight hundred and forty-eight and ninety-eight one-hundredth acres; or, in all, forty-four thousand three hundred and thirty-three and forty one-hundredths acres.

Leaving unpatented lands of the said rancho aggregating 2,352 acres.

Your petitioners further show that, as they are advised and believe, the United States holds the naked legal title to said 2,352 acres of the lands of said rancho in trust for the grantees of said Luis Peralta, the said confirmees and their assigns, and your petitioners.

50½ Your petitioners further show that all the claimants, confirmees in this case, departed this life before the first day of January, in the year 1880, and that on the 19th day of July, in the year 1899, this court, after due proceedings had, did, by its order made and entered in open court on that day, the Hon. Frank L. Coombs, attorney for the United States, being present and not objecting, admit your petitioners to intervene in this case; which order is in the words and figures following, to wit:

Title of Court and Cause.

On motion of W. H. Fifield, Esq., it is ordered that M. F. Truett, John Caperton, and M. E. H. Gwin be, and each of them is hereby, authorized to intervene in this proceeding for the protection of their prospective (respective) interests, as such interests may be made to appear.

51 Wherefore your petitioners pray that the decree of this court, so made and entered in this proceeding on the 30th day of November, in the year 1859 (and filed December 1, 1859), may be ordered to be executed.

That the United States may, by the order and judgment of this court, be directed and required to cause to be made, signed, and issued to the said claimants, confirmees in the proceeding, its patent in due form of law for the lands of the rancho of San Antonio or for so much and such parts thereof as have not heretofore been patented to them or any of them, by a day to be fixed in such order and judgment, and that in default thereof the United States show cause before this court, at a time and place to be fixed in such order and judgment, why she has not so made, signed, and issued or caused to be made, signed, and issued such patent.

And that your petitioner- may have such further and other or other and further order and relief in the premises as may be just and agreeable to equity.

MARY E. H. GWIN,
MIERS F. TRUETT,
By their attorneys, BOYD & FIFIELD.

JAMES T. BOYD, *Of Counsel.*

52 "SCHEDULE A," Referred to in the within Petition.

(Copy.)

"G." G. McC. F. C.

W. H. L. GENERAL LAND OFFICE, WASHINGTON, D. C., *September* 22, 1896. W. O. C. J. V. W.

U. S. surveyor general, San Francisco, Cal.

SIR: There has been filed in this office by James T. Boyd, of San Francisco, a petition of Mary E. H. Gwin and Francisco Sanjurjo for the issue of a second patent for the San Antonio rancho, California. The parties named show that they are the owners respectively of an undivided interest in said rancho, and ask that a new patent be issued, including not only the lands already patented, but also the "land covered by the waters of San Antonio creek," which is not included in the patents heretofore issued.

This rancho was originally granted to Don Luis Peralta, and the claim therefor was presented to the board of land commissioners by his sons, Vicente, Antonio, Ignacio, and Domingo. Afterwards the attorneys for Antonio and Ignacio Peralta applied for leave to file separate petitions, each for his separate portion of said rancho, which was granted, and a stipulation was entered into by which Ignacio Peralta was given the southern portion of said claim; that, going north, the second tract was given to Antonio Peralta, Vicente and Domingo Peralta being given the northern portion.

52*a* The district court for the southern district of California confirmed this claim in its entirety, giving the western boundary as follows:

"From the mouth of said deep creek of San Leandro up to the beginning of the said line which has been described as the northern boundary of said tract, which line along the bay constitutes its western boundary."

The three claims were also confirmed by separate decrees, the boundary between the claim of Vicente and Domingo Peralta and that of Antonio Peralta being given as "a ravine a short distance south of the buildings in the town of Oakland, on the north of which ravine is a small house in sight of the public road."

The decree in the case of Vicente and Domingo Peralta was affirmed by the Supreme Court of the United States (19 Howard 343).

This ravine appears to be San Antonio creek, which is shown to end in San Antonio bay, an arm of the bay of San Francisco. Patent issued to Domingo and Vicente Peralta for the lands north of said ravine to bay of San Antonio, the survey running at the water line around said bay, and patent issued to Antonio Peralta for the lands south of said bay and ravine, the survey and patent following the water line of the bay of San Antonio.

The contention of the petitioners is to the effect that as the bay of San Francisco is the western boundary of said grant, as confirmed,

52b they are entitled to a patent for the lands covered by the waters of San Antonio bay, and request the issue of a second patent to the Peraltas for the whole of the grant, including the land under the waters of said bay.

A brief is filed on behalf of the petitioners, which it is unnecessary to consider, as the action taken by the courts upon the survey of these claims precludes this office from further action.

A survey was made of the claim of Antonio Peralta, which was approved by the district courts in the northern district of California October 4, 1871, and patent issued accordingly.

A survey of the claim of Vicente and Domingo Peralta, duly made, and approved by the surveyor general of California, was returned into said court, which court, under date of November 22, 1862, rendered a decree directing a modification of said survey between courses 93 and 113, inclusive, so as to exclude therefrom and from the lands confirmed the waters of the bay of San Francisco and of the arms thereof and the lands covered thereby as far as the tides ordinarily flow at the full and change of the moon. An amended decree was entered November 27, 1866, which, however, did not change in effect the portion above recited.

A survey under this decree was returned into court, and the court, on July 5, 1871, directed a modification of this survey to conform to the former decree. The survey was accordingly modified, again presented to the court, and by decree dated August 4, 1871, duly approved.

An appeal from this action of the district court was taken by certain intervenors to the circuit court for the district of Cali-
52c fornia, which was subsequently certified to the Supreme Court of the United States.

While the case was pending in the Supreme Court a compromise seems to have been effected, and the appeals to the circuit court were dismissed. This left the decree of the district court as final.

The question was again brought before this office upon a protest against the survey of said claim, and on January 23, 1877, a decision was rendered, holding that the district court having approved said survey in the proper exercise of its jurisdiction, nothing remained for this office but the ministerial duty of issuing a patent upon said survey.

This decision was affirmed by the Secretary of the Interior, February 7, 1877, who directed the Commissioner of the General Land Office to issue patent according to said survey.

It will thus be seen that the particular matter raised by the petitioners has long since become *res judicata*, and the petition is therefore dismissed.

Advise Mr. James T. Boyd, 324 Pine St., San Francisco, of this action.

Local counsel for the petitioners have been advised.

Very respectfully,

(Signed) E. F. BEST,
Assistant Commissioner.

52d "SCHEDULE B," Referred to in the within Petition.

(Copy.)

J. W. W. "G."

U. S. surveyor general, San Francisco, California.

SIR: In 1820 the Mexican government granted to Don Luis Peralta the Rancho San Antonio, a tract of land lying between the summit of the Coast Range mountains, on the east, and the bay of San Francisco, on the west, in what are now townships one and two south and one north.

On January 21, 1852, the title of Louis Peralta having in the meantime passed to his sons, Domingo, Vicente, Antonio, and Ignacio, they presented their petition for confirmation of said grant to the board of commissioners under the act of March 3, 1851, 9 Stats., 631, but before any action was taken thereon a stipulation was filed by which they divided said lands among themselves, each taking a part extending from the mountains to the coast, as follows: Domingo taking the tract furthest north, Vicente the next on the south, Antonio the next, and Ignacio the other.

After the lands were partitioned in this manner Antonio and Ignacio instituted separate proceedings for the confirmation of the parts allotted to them, but their names were not stricken from the original petition which prayed confirmation of the entire tract.

After the commissioners had sustained both of these peti-
52e tions they went on appeal to the United States district court, where decrees of confirmation were entered in each case.

In the decree rendered on the original petition there were two paragraphs, one confirming the entire grant in general terms and the other specially confirming the grant as to lands allotted to Domingo and Vicente. This case then went on appeal to the Supreme Court of the United States, where the grant was again declared valid and effective; but, inasmuch as the question now before me for consideration was not then involved or considered, it is not necessary to take notice of that decision further than to say that by its mandate the case was sent back to the district court, that "such further proceedings be had as according to right and justice and the laws of the United States ought to be had."

It now becomes pertinent to notice particularly the western boundary line of the entire rancho, and also to call attention to the line dividing the lands of Vicente from those of Antonio.

The first paragraph of the decree, confirming the entire grant, describes the western boundary as follows: "By the said bay of San Francisco (from the southwest corner of the entire tract) * * * up to the beginning (the northwest corner), which line along the bay constitutes the boundary," while the second paragraph, confirming the grant as to the lands of Domingo and Vicente,

says it is bounded "on the west by the bay of San Francisco
52f and on the south by a ravine, a short distance south of the town of Oakland." This ravine, sometimes called San An-

tonio creek, flows westward through the central part of the rancho and empties into an arm of the bay of San Francisco, at or near where the present town of Oakland is situated. This arm of the bay, triangular in shape and containing an area of 1,550 acres, has sometimes been called the San Antonio bay. Its shores form a part of the boundary lines of and for a distance separates the lands allotted to Vicente from those allotted to Antonio.

Turning again to the proceedings for confirmation, we find that, after the decrees declaring the grant to be valid and binding upon this Government had become final, a survey was made which included only the lands set apart to Domingo and Vicente, and other surveys were made including only the lands of Antonio and Ignacio, and maps or plats of each of these surveys were made out and filed.

These surveys fixed the middle of the San Antonio creek and of the so-called San Antonio bay as the dividing line between the lands of Vicente and those of Antonio.

After these surveys had been made and filed, H. W. Carpentier *et al.* presented their petitions, in which they claimed adversely "so much land lying under the waters of that area of the bay of San Francisco known as the estuary of San Antonio up to the highest tide lines," * * * through mesne conveyances from the State of California.

After various proceedings and resurveys, which need not be specifically mentioned here, the court sustained Carpentier's petition,
52*g* and finally approved the survey which fixes the lines of said grant "to run along the inner shore, excluding therefrom and from the lands confirmed the waters of the bay of San Francisco and the arms thereof, and lands covered thereby, as far as the tides ordinarily flow at the full and change of the moon," and patents were issued by this office upon the survey so approved.

On September 2, 1896, Mary H. Gwin and Francisco Sanjurjo, claiming to be the owners of an interest in said land through mesne conveyances from Vicente Peralta, filed in this office their petition, accompanied by what purports to be a map of the entire Rancho San Antonio, which you certified was compiled from official data in your office. This is the only map, purporting to be a map, of the entire rancho which has ever been prepared and filed.

Upon this map you have so extended the western boundary lines from headland to headland along the shore of the bay of San Francisco as to include therein area of about 1,550 acres for the so-called San Antonio bay and of about 802 acres in the San Leandro bay which were explicitly excluded from the approved surveys upon which patents were issued.

In this *par*tition they ask that the map filed therewith be approved and that a patent issue thereon.

On September 22, 1896, this office considered said petition and refused to approve your map or issue an additional patent thereon for the reason that "the particular matter raised by the petition has
long since become *res judicata*," and I now have before me
52*h* for consideration petitioner's motion for review and reversal of that decision.

In support of this motion it is contended by the petitioners that the district court had no jurisdiction to direct a resurvey of said land, and that for that reason the patent heretofore issued erroneously excluded the lands lying under the waters of the so-called San Antonio bay, which were included in the first survey presented for approval.

This contention cannot be sustained, and the motion must therefore be denied.

Under the provisions of the act of March 3, 1851, *supra*, and the act of June 14, 1860, 12 Stats., 33, any person claiming an interest in any lands included within such survey were entitled to present their petition to the district judge, setting forth their title, and praying the judge to hear and determine the issue thus presented.

Carpentier *et al.* availed themselves of the privileges thus offered and claimed title to the lands covered by the said San Antonio bay and erroneously included in the original survey.

Even if the district court did not otherwise have power *sua sponte* to order the original survey into court and direct the correction of the apparent error therein, it certainly ad jurisdiction under the statutes cited to entertain Carpentier's petition and direct that the survey be made to conform to the proper limits of the grant, and such an action was not contrary to the Supreme Court's mandate, because it expressly directed that the district court take
52*i* "such further action as according to the right and justice and the laws of the United States ought to be had."

If further authority was needed to overthrow the position of the petitioners, attention might be called to the case of Guyer *vs.* Banning, 167 U. S., 723, where the Supreme Court expressly declared that the district court had power under the said act of March 3, 1851, to direct a resurvey in order that its decree fixing the boundaries might be properly executed.

Having then act*ing* within its jurisdiction in directing the correction of the survey, and that action having become final, this office never had at any time power to direct otherwise, and it very properly issued patent upon the survey as approved. See Martinez *vs.* United States, 22 L. D., 105.

If an additional reason should be given for denying this motion, one which, to my mind, is entirely conclusive may be found in section 15 of said act of March 3, 1851, which provides "that final decree rendered by said commissioners, or by the district or Supreme Court of the United States, or any patent issued under this act shall be conclusive as between the United States and the claimants only, and shall not affect the interests of the third persons."

After following and citing the language of numerous other decisions, the Supreme Court in the recent case of Guyer *vs.* Banning, *supra*, concludes by using the following language:

"A patent having been accepted by the patentees and being uncancelled, the plaintiffs in this action claiming under the
52*k* patentees cannot recover lands not embraced by it even if such lands are embraced by the lines established by the decree

of confirmation, conclusive presumption being that the patent correctly locates the lands covered by the confirmed grant."

It is unnecessary to comment upon these authorities, which plainly declare that the present applicants are concluded both by the final decree of the circuit court and the issuance of patent thereon.

The motion for review is therefore denied.

Messrs. Thayer & Rankin, attorneys of this city, representing the petitioners, have been notified of this action.

Very respectfully,

(Signed) F. W. MONDELL,
Assistant Commissioner.

53 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

James T. Boyd, of the city of San Francisco, being duly sworn, deposes and says that he is an attorney of this court and one of the attorneys for the said petitioners; that he has read the aforegoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters that he believes it to be true.

Deponent further says that he makes this verification because the facts stated in said petition are within his knowledge, and he is better informed in relation thereto than are the said petitioners.

JAMES T. BOYD.

Sworn to this 28th day of M'ch, 1900, before me—

JOHN FOUGA,
Deputy Clerk U. S. District Court,
Northern District of California.

54 In the District Court of the United States for the Northern District of California.

THE UNITED STATES }
vs } No. 100. Land Cases.
VICENTE PERALTA and Others. }

You will please take notice that we shall move the district court of the United States for the northern district of California, at the court-room of the court, in the Appraisers' building, in the city of San Francisco, on Monday, the 9th day of April, in the year 1900, at the opening of the court or as soon thereafter as counsel can be heard, for a rule or order of said court commanding the United States to issue or cause to be issued to the said claimants, confirmees, Antonio Peralta, Vicente Peralta, Ignacio Peralta, and Domingo Peralta, or to such of them as may be entitled thereto, a patent for the lands of the Rancho San Antonio in conformity with the approved official plat of the survey of said rancho now on file in the Department of the Interior of the United States, in execution of the decree of this court in this proceeding made and entered on the 30th day of November, 1859 (filed December 1, 1859), or of so much and

such portions of the said lands as have not been already patented to them or any of them on or before a day to be fixed in such rule or order, or to show cause before this honorable court at a time
55 and place to be also fixed in said order why the United States has not issued such patent or caused it to be issued; that such motion will be founded on the petition hereto annexed.

And for such further and other or other and further order and relief in the premises as may be just and agreeable to equity.

Dated San Francisco, March 28th, 1900.

MARY E. H. GWIN,
MIERS F. TRUETT,
By BOYD & FIFIELD,
Their Attorneys.

JAMES T. BOYD, *Of Counsel.*

To Hon. Frank L. Coombs, attorney of the United States for the northern district of California.

Endorsed: Filed Mar. 29, 1900. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

56 In the District Court of the United States in and for the Northern District of California.

THE UNITED STATES *vs.* VICENTE PERALTA ET AL. } No. 100.

Now comes the United States of America, by Frank L. Coombs, United States attorney for the northern district of California, and demurs to the petition herein on the following grounds, to wit:

I.

That the petition herein does not state facts sufficient to warrant or authorize the court in granting the relief prayed for.

II.

This court has no jurisdiction to grant the relief prayed for, for the reason that the relief prayed for, to wit, the issuance of a United States patent for the lands, and to the petitioner, pertains to the political power of the Government and abides solely within the authority and judgment of the Commissioner of the General Land Office and the President of the United States, and this court is without jurisdiction to direct or cause a patent to be issued as prayed for.

III.

For the reason that it appears from the petition that this court has made its final orders and entered its final decrees and
57 caused the same to be executed in conformity with law and to the full extent of the authority and jurisdiction of this court pertaining thereto.

IV.

For the reason that it appears from the petition that all the orders and decrees necessary and sufficient for the hearing and determination of this case, and conclusive of the issues in this cause, have been made and entered, and that its final decree, and to the full extent of its power and jurisdiction, has been made, entered, and executed, and that the court is without further jurisdiction hereto.

V.

For the reason that it appears from said petition that the said decree of November 30th, 1859, is not the final decree of this court, and that the same has been set aside and is now without force or effect.

VI.

For the reason that it appears that final orders and decrees were made, other than the decree of November 30th, 1859, subsequent to and setting the same aside, which were and are in final determination of the issues and matters involved in this cause, in full and final satisfaction of the claims of the confirmees herein, their heirs and assigns, and that upon such decrees due and legal steps were taken and proceedings were had toward carrying the same into full force and effect, and a patent has been issued in accordance with the same.

58

VII.

For the reason that it further appears that the said decree of November 30th, 1859, was executed according to its force and effect and according to the full power and jurisdiction of this court.

VIII.

For the reason that it appears that the decree made and entered June 4th, 1871, was and is the final decree of this court, determining the rights of the confirmees herein, and that a United States patent was applied for by the confirmees upon said decree and in accordance with the rights thereby determined, and especially with reference to the quantity and tract of land thereby confirmed, and that it further appears that said patent was issued in accordance therewith.

IX.

For the reason that it appears that the United States, acting in accordance with the rights assured by treaty of Guadalupe Hidalgo and in faith with the Mexican Republic and in accordance with the several acts of the Congress of the United States relating thereto, has issued its patent to the confirmees herein and to the full extent of its duty, its faith and its power, and in complete and full satisfaction of the rights of said confirmees, as ascertained in these proceedings instituted by said confirmees for such purpose.

X.

For the reason that it appears that the two thousand three hundred and fifty-two acres of land claimed by petitioner, or with reference to which the petitioner claims an interest, *was* by this court and by final decree, upon which patent was issued, determined and adjudicated not to be within the lands of claimants, and were
59 expressly excluded from them and from the said patent.

XI.

For the reason that it appears that the last and final decree and order of this court was made and entered in 1871; that an appeal was taken therefrom; that said appeal was dismissed by consent; that the claimants then and there and thereupon, on the 4th day of August, 1874, applied for and procured an order of this court permitting said claimants to proceed under the final decree aforesaid, and that the Commissioner of the General Land Office caused to be prepared and recorded a patent of the United States in accordance with said decree and in accordance with the application of the confirmees; that said decree and orders were and are *res judicata*.

XII.

For the reason that it appears that the confirmees herein accepted in good faith and as conclusive of their rights and interests in and to the lands of which they claimed title under the decree of June 4th, 1871, and applied for an order of this court to proceed thereunder and in execution thereof and to procure a United States patent for the lands confirmed thereby.

XIII.

For the reason that it appears that when the said decree of 1859, herein invoked by petitioner, was set aside or superseded by other and further decrees as aforesaid, that the confirmees herein and the said confirmee from whom petitioner claims title never appealed therefrom, but, on the contrary, proceeded with the trial of the
60 cause and the proceedings subsequent thereto, all with the view of having the title to the lands in controversy confirmed to them or to him, as to the court might seem just and proper, according to the law and the evidence to be adduced in the further hearing thereof.

XIV.

For the reason that it appears that the said confirmees have never, nor has either of them ever, appealed from the said decrees, nor from either of them, and that the same were accepted by them as conclusive of the issues herein.

XV.

For the reason that it appears from said petition that every act has been done and every decree executed and every order enforced necessary and required under the law and the premises to a com-

plete and full determination of the issues herein and to the ascertainment and settlement of the claims of the confirmees as contemplated and provided by the law, and especially by the acts of Congress relating thereto, and that the last act of the Government of the United States of America has been done and performed in the issuance of its patent, according to its complete and lawful authority, and that this court is without other or further jurisdiction in this cause.

That, for the reasons and for each and every reason above stated, this court is without other, further, and without any jurisdiction in this cause, and especially to grant the prayer of petitioner herein.

Wherefore the said United States prays that the motion of Mary E. H. Gwin herein be denied, that her petition herein be dismissed, and for such other and further relief as to the court may seem just and proper in the premises.

FRANK L. COOMBS,
United States Attorney.

61 Endorsed: Service of the within demurrer by copy admitted this 4th day of April, 1900. Boyd & Fifield, attorney- for petitioners. Filed Apr. 4, 1900. Geo. E. Morse, clerk.

62 In the District Court of the United States for the Northern District of California.

THE UNITED STATES
vs.
VICENTE PERALTA (GWINN and TRUETT, Interveners). } Land Case No. 100.

Boyd & Fifield, for the petitioner.
Frank L. Coombs, United States attorney.

HAWLEY, *District Judge* (orally):

The petition of Mary E. H. Gwinn, as intervener herein, having been heretofore dismissed without prejudice, a new petition has been filed by her and one Miers F. Truett asking the court to grant the same relief as was prayed for in the former petition. To this petition a demurrer has been interposed, upon the ground, among others in said demurrer specifically mentioned, "that the petition herein does not state facts sufficient to warrant or authorize the court in granting the relief prayed for."

The present petition is not subject to the objection made at the former hearing to the form of the pleadings, and that portion of the opinion which discusses that question may be said to be now eliminated from the case, because the present petition does set forth the steps that were taken and the orders and decrees that were made and rendered by the district court after the entry of the decree of November 30, 1859 (filed December 1, 1859), and states in detail certain facts concerning the plat of survey of November 25,
63 1895, made by the surveyor general, upon which the petitioners rely, and the action of the officers of the General

Land Office in regard thereto. It will thus be seen that there are many details in the facts set out in this petition that were not embodied in the former petition; but these additional facts simply present the questions herein involved more clearly and distinctly than before. The legal principles are precisely the same as were presented, discussed, and decided by this court in United States *v.* Peralta, 99 Fed., 618, and the views therein expressed are as applicable to this petition as to the former one. The reasons given by the Assistant Commissioners of the General Land Office to the surveyor general (which are annexed to and made a part of the petition) for refusing the petitioner's request for the issuance of a patent, in accordance with the survey of the surveyor general of California made in 1895, are in all respects consistent with the views expressed in the former opinion. Their conclusion in regard thereto is identical, viz: "That the particular matter raised by the petitioner has long since become *res judicata*." In the light of all of the facts and of the consideration heretofore given to this case, I deem it unnecessary to again discuss the same questions. It is enough to say that I have carefully read the petition, the elaborate and exhaustive brief filed by the learned counsel on behalf of the petitioners, and examined the numerous authorities cited therein, and my conclusion is that the demurrer should be sustained, the motion of the petitioners be denied, and the petition dismissed. It is so ordered.

Endorsed: Filed May 28th, 1900. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

64 In the District Court of the United States for the Northern District of California.

UNITED STATES
v.
VICENTE PERALTA; MARY E. H. GWIN, Intervener. } Land Case No. 100.

Demurrer to Petition for the Enforcement of a Judgment and for an Order to Compel the United States to Issue a Patent.

On July 27, 1899, Mary E. H. Gwin, intervener herein, filed the following petition: "The petition of Mary E. H. Gwin, intervening in this proceeding for her interest, by leave of the court first had and obtained, respectfully shows that heretofore, to wit, on the 21st day of January, in the year 1852, Antonio Peralta, Vicente Peralta, Ignacio Peralta, and Domingo Peralta, claiming lands in California by virtue of a right and title derived from the Spanish and Mexican governments, presented to and filed with the board of United States land commissioners, constituted under the act of Congress entitled 'An act to ascertain and settle the private land claims in the State of California,' passed March 3rd, 1851, their claim for the lands of the rancho of San Antonio, in said State, together with such documentary evidence and testimony of witnesses

as the petitioners relied upon in support of their
65 said claim; that thereupon the said board, when the case was ready for hearing, proceeded to and did examine such claims upon such evidence and the evidence produced in behalf of the United States, and did decide upon the validity of the claim, and did certify its decision, with the reasons on which it was founded, in due time to the then district attorney of the United States in and for the northern district of California; that afterwards, and after due proceedings had in this court, this court in land case No. 100 did review the said decision of said commissioners, and did affirm the validity of the claim of said petitioners, and did render judgment on the pleadings and evidence in the case by its decree duly given and made on the 26th day of January, in the year 1855; that afterwards, and on appeal by the United States duly granted by this court to the Supreme Court of the United States, that tribunal, by its decision duly given and made at the December term, in the year 1856, did affirm the validity of the grant and the claim of the said petitioners thereunder, and did remand the case to this court for further proceedings in accordance with its opinion. Your petitioner further shows that thereafter this court by its decree duly given and made on the 30th day of November, in the year 1859 (filed December 1, 1859), duly amended its said decree to conform to the said decision and opinion of the Supreme Court. Your petitioner further shows that afterwards, and on the 23rd day of July, in the year 1866, the Congress of the United States passed an act entitled 'An act to quiet land titles in the State of California;' that by the 8th section of said act it was provided that in the event that no
66 survey of the said grant had been before the passage of said act requested by said confirmees, nor had any such survey been requested within ten months after its passage, the duty was devolved upon the surveyor general of the United States for California, as soon as practicable thereafter, to extend the lines of the public surveys over said grant, and to set off in full satisfaction of the grant the quantity of land confirmed in the said decree, as nearly as could be done in conformity with such decree. Your petitioner further shows that no survey of the grant of the San Antonio rancho confirmed in this proceeding had been requested by the confirmees or their assigns before the passage of said act, nor had any survey thereof been requested by them within ten months after the passage of said act, nor had any such survey been made, and it thereby became the duty of the surveyor general of the United States for California, as soon as practicable from the expiration of ten months from the passage of said act, to set off, in full satisfaction of such grant and according to the lines of the public surveys, the quantity of land confirmed in the final decree herein, as nearly as could be done in accordance with such decree; that afterwards, and on or about the 25th day of November, in the year 1895, and as soon as practicable after the passage of the said act of July 23rd, 1866, the said surveyor general duly made, approved, and certified a plat of the survey of the said rancho of San Antonio in accordance with and in part execution of the said decree of this

court; your petitioner here further shows that she is interested in the lands of the said rancho under the said claimants and confirmees, and that her title thereto was
67 derived by mesne conveyances from the said confirmees, as will more fully appear by reference to the public official records of the counties of Contra Costa and Alameda, in the State of California, to which records she prays leave to refer and makes them a part of this her petition. Your petitioner further shows that thereafter the said plat of survey was, on or about the second day of September, in the year 1896, presented to the honorable the Commissioner of the General Land Office of the United States, at the city of Washington, District of Columbia, together with duly certified copies of said several decrees and an authentic certificate of such confirmation, by your petitioner, Mary E. H. Gwin, and one Francisco Sanjurjo, since deceased, together with the deraignment of their respective titles thereunder from the said claimants, confirmees, Vicente, Domingo, Antonio, and Ignacio Peralta, with a request that he issue or cause to be issued to said claimants, confirmees, Vicente Peralta and others, a patent for the lands of the rancho in accordance with such plat of survey in due form of law. Your petitioner further shows that the said Commissioner, whose duty it was to prepare and cause to be properly signed and issued, upon receipt of such plat of survey and certificate of confirmation, a patent to the said claimants, confirmees for the said lands, although often requested, has neglected and refused and still does neglect and refuse, and did, on the 22nd day of January, in the year 1898, expressly refuse to prepare and issue or cause to be issue such patent, to the great damage of petitioner; that thereafter, and within due
68 time, your petitioner here duly took and perfected an appeal from the said refusal and decision of the said Commissioner to the honorable the Secretary of the Interior of the United States, which appeal was in due time heard and considered, and on the fifth day of July, in the year 1898, the said refusal and decision by the said Commissioner was by the honorable the said Secretary expressly approved and affirmed, and he, the said Secretary, refused and does still refuse to issue or to order issued a patent for the lands of the said rancho to the said claimants, confirmees, as aforesaid, or to any one for their use or at all, to the great damage of your petitioner. Your petitioner further shows that the act of the said surveyor in making and certifying the said plat of survey was the act and deed of the said The United States; that the said plat was accepted by your petitioner on behalf of the said claimants, confirmees; that the same has never been appealed from, reversed, or set aside; and your petitioner prays leave to refer to the said plat of survey, now on file and of record in the proper land office of this district and in the Department of the Interior of the United States, or to a certified copy thereof, and to make the same a part of this her petition. Wherefore your petitioner prays that the decree of this court so made and entered in this proceeding on the 30th day of November, in the year 1859 (and filed December 1, 1859), may be ordered to be executed; that the United States may, by the order and

judgment of this court, be directed and required to cause to be made, signed, and issued to the said claimants, confirmees, in the proceeding its patent in due form of law for the lands of the
69 rancho of San Antonio, or for so much and such parts thereof as have not heretofore been patented to them or any of them, by a day to be fixed in such order and judgment, and that in default thereof the United States show cause before this court, at a time and place to be fixed in such order and judgment, why she has not so made, signed, and issued, or caused to be made, signed, and issued, such patent, and that your petitioner may have such further and other or other and further order and relief in the premises as may be just and agreeable to equity."

The United States of America, by and through its attorney, Frank L. Coombs, United States attorney for the northern district of California, demurs to the petition of Mary E. H. Gwin, filed herein, and for cause of demurrer shows to the court the following: "First. That the petition herein does not show from whom petitioner derives or claims to derive title to the lands or interests in controversy. Second. That it does not appear, and as a matter of fact is not true, that the decree of this court made on the 30th day of November, 1859, and referred to by petitioner, was and is the final decree of this court in and in relation to the matters and issues involved in this cause. Third. That the decree made by this court on the 30th day of November, 1859, and referred to as a final decree with reference to the lines of said grant established thereby and with reference to the surveys directed thereunder, but was subsequently thereto changed and modified with reference to said lines and surveys by other decrees, and especially by a decree of this court made on the
70 4th day of October, 1871, which was and is the final decree of this court and the final order with reference to said lines and surveys. Fourth. That it does not appear from said petition that the act of Congress of July 23, 1866, cited and referred to in said petition, empowered the surveyor general of the United States for California to do and perform the things, especially in reference to the plat and survey alleged to have been transmitted to the Commissioner of the General Land Office, in Washington. Fifth. That the map and survey made by the surveyor general of the United States for California, as aforesaid, was made contrary to and without authority of law, and without authority of this court, and in defiance of its order and decree, and especially in defiance and in contravention of its decree of October 4, 1871, in relation thereto, as fully appears by the records in this cause. Sixth. That it does not appear from the petition that there was not a request made in conformity with law for a survey of the lands confirmed by the decree of October 4, 1871, and in conformity therewith, and it does not appear that the surveyor general aforesaid did not transmit or cause to be transmitted a proper map or survey of said lands in conformity with said decree; that it does not appear that any or all of the requirements of law in relation to such matters were not strictly complied with under and by virtue of said final decree of October 4, 1871. Seventh. That this court has no jurisdiction over these

proceedings, having heretofore, to wit, on the 4th day of October, 1871, fully determined by its decrees made and entered
71 on said day all of the matters in controversy pertaining to the validity of said grant and the survey and lines established thereunder, and for the further reason that in conformity with said decree patents have been issued to all of the claimants by the United States of America and have been accepted by them, their heirs and assigns, for more than twenty years last past. Eighth. Further, that this court is without jurisdiction for the reason that it appears from the proceedings herein that the particular lands claimed by the petitioner were determined in these proceedings to be lands held by the State of California by reason of its sovereignty and were awarded in said decree to the particular interveners claiming under the said State of California, and were ordered therein not to be included in, but to be excluded from the lines of said Rancho San Antonio, as the same were established by said final decree of confirmation. Ninth. The court is without jurisdiction for the reason that it appears upon the petition herein that petitioner presented her application and petition to the Commissioner of the General Land Office, asking for an adjudication of her rights and for a patent to the lands claimed by her, which, as appears by the petition herein, were determined upon by said Commissioner, and upon appeal being taken to the Secretary of the Interior of the United States by petitioner the said decision of the Commissioner was confirmed and approved. Tenth. That this court is without authority and jurisdiction for the reason of the causes above alleged to give the relief sought in this petition or to order and direct that a patent or any patent at all be issued by the Gov-
72 ernment of the United States of America or by any of its agents acting thereunder to said lands or any part thereof. Eleventh. That it does not appear that any of the acts directed to be done and performed by the final decree of this court have not been done in conformity therewith and with law. Twelfth. That the petition does not state facts sufficient to entitle the petitioner to the relief demanded therein."

The decree of 1859, which is claimed by petitioner to be the final decree, reads as follows: "It satisfactorily appearing to the court that in the decree of this court heretofore entered in this cause and affirmed on appeal by the Supreme Court of the United States a clerical error has intervened, and that the said decree is repugnant and inconsistent with itself, and it further appearing to this court that the northern boundary of the tract of land confirmed to said claimants is erroneously described as running by the southern base of the cerrito therein mentioned, whereas the said northern boundary, as declared and adopted by the Supreme Court of the United States in the opinion of said court in this case, is 'the rivulet which issues from the mountain range and runs along the foot of said cerrito of San Antonio, and at the entrance of a little gulch there is a rock elevating itself in the form of a monument and looking towards the north,' and it appearing to this court that the rivulet so adopted as the said northern boundary runs along the base of the said cerritos

of San Antonio and not along the southern base thereof, and it further appearing that the ridge of mountains constituting the eastern boundary of said rancho is erroneously de-
73 nominated its western boundary, as is manifest from the face and terms of the decree itself: It is, on motion of the counsel for the parties interested in said claim, and the district attorney being present and not objecting thereto, ordered that the said decree —, and the same hereby is, construed and amended by substituting the word 'northern' for 'southern' where the word 'southern' the first time occurs in said decree, and the word 'eastern' for 'western' where the latter word first occurs in said decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

(Endorsed:) Filed December 1, 1859."

The record in the original case of United States of America *v.* Vicente Peralta *et al.*, No. 100, shows that on June 5, 1871, the following decree was entered in said cause:

"This cause came on this day again to be heard upon objections to the modified survey filed in this cause and was argued by counsel; and thereupon and in consideration thereof it is ordered, adjudged, and decreed that the said modified survey be, and the same is hereby, set aside as not being in conformity with the direction of this court heretofore entered and given in this cause; and it is further ordered, adjudged, and decreed that the said survey hereby set aside be modified between course 93 and course 113, as the same are laid down on the plat, heretofore filed in this cause, of the survey of said lands made by James T. Stratton, United States deputy surveyor, and approved by J. W. Mandeville, United States surveyor general for the State of California, on the 3rd day of March, 1860, so as to include all of the lands between said course down to the ordinary high-water line and exclude only so much land between
74 said courses as is covered by the tide- which happen between the full and change of the moon, twice in 24 hours; and it is further ordered, adjudged, and decreed that the surveyor general of the United States for the State of California cause said survey hereby set aside to be modified, without delay, in accordance with this decree and return a plat of the same into this court for its approval; and, in determining the line of ordinary high water between the courses aforesaid, it is further ordered, adjudged, and decreed that the said surveyor general adopt the line fixed as such by the officers of the United States Coast Survey as the same is delineated on the plat marked 'Exhibit Rogers No. 1' and described in the field-notes of said survey, copies of which are on file in this cause.

OGDEN HOFFMANN,
District Judge."

And on August 4, 1871, a decree approving the survey made in conformity with the decree of June 5, 1871, was entered as follows: "This cause came on this day again to be heard, and it appearing to the court that no exception has been filed to the modified survey

heretofore made under order of this court and a plat of which was filed in the clerk's office of this court on the 26th day of July, 1871, now, therefore, on motion of Williams & Thornton, due notice thereof having been given, it is ordered, adjudged, and decreed, *that* this court doth hereby order, adjudge, and decree, that said modified survey be, and is hereby, approved as a true and correct location of the lands confirmed in the above-entitled cause. The survey of which confirmation is hereby made contains eighteen thou-
75 sand eight hundred and forty-eight $\frac{98}{100}$ (18,848.98) acres and is the same executed under the order and direction of this court by decree entered in this cause on the 5th day of June, 1871, a duly certified plat whereof was filed in the clerk's office of this court, as aforesaid, on the 26th day of July, 1871, and is marked 'Approved August 4th, 1871, Ogden Hoffman, dist. judge,' and attached hereto as a part of this decree.

OGDEN HOFFMAN,
U. S. Dist. Judge."

Boyd & Fifield, for petitioner.
Frank L. Coombs, U. S. attorney, for the United States.

HAWLEY, *District Judge:*

The petition and demurrer which have been copied verbatim in the foregoing statement are deemed sufficient to explain the nature and character of this proceeding and to render it unnecessary to refer in detail to the steps that were taken in the original case prior to the rendition of the decree of November 30, 1859 (filed Dec. 1, 1859).

For the purpose of disposing of the questions raised by the pleadings herein, it will be admitted without discussion that the court has jurisdiction and is possessed of the inherent power and authority to do whatever is necessary to be done in order to enforce its lawful decrees. It must not, however, be understood by this admission to include the proposition that in proceedings like the present the court has any jurisdiction, power, or authority to order or direct the issuance of a patent by the United States, as prayed for by the petitioner. That branch of the question will be hereafter referred to.

76 The pleadings upon this motion are peculiar in this: that the petition of the intervener does not state all the proceedings in the suit of United States *v.* Peralta, and the United States, instead of answering the petition and setting up all the facts, demurs thereto, thereby admitting, in the eye of the law, in so far as the demurrer can be treated as a general demurrer, that the allegations of the petition are true.

It is apparent that the petition does not state all of the steps that were taken by the court after the decree of 1859. It entirely ignores any reference to the proceedings of this court in rendering the decree of 1871, and of the steps taken thereunder which resulted in the issuance of a patent to the claimants in the original suit.

Counsel in illustrating their arguments in favor of or against the demurrer have detailed many facts in regard to the proceedings had

in the original case and the decrees rendered therein and the various steps taken thereunder.

The contention of the petitioner's counsel is that the court should not consider any facts whatever except those mentioned in the petition and admitted by the demurrer.

The argument on the part of the United States is to the effect that the court is bound to take judicial notice of its own orders and decrees made in the original suit, regardless of the question whether they are set forth or referred to in the petition under consideration or not.

In relation to these contentions it will be observed that the
77 demurrer, with the exception of a few points made therein, must be considered as a special demurrer, if the nature of a special plea, setting forth facts why the relief asked for should not be granted. It does not admit, but, on the contrary, expressly denies, that the decree of this court made November 30, 1859, and filed December 1, 1859, "is the final decree of this court in relation to the matters and issues involved in this cause," and in this connection avers that the decree of 1859, with reference to the lines of the grant established thereby and with reference to the surveys directed thereunder, was subsequently changed and modified with reference to said lines and surveys by the decree made October 4, 1871 (and other decrees), and that this was and is the final decree of this court with reference to said lines and surveys.

The pleading interposed by the United States is not a speaking demurrer in the sense that it endeavors to bring in a state of facts independent of the records in the original cause, and to bind the petitioner by such statement. This cannot be done. The pleading, by whatever name it may be called, only seeks to complete the record of the decrees made in the original case, without a consideration of which the court could not properly decide the questions sought to be raised by an imperfect or incomplete statement of the record.

As the petition does not contain all the essential facts of the original case with reference to the decree of 1859 and of the steps taken by the court thereunder, I fail to see any good or substantial reason why such facts could not be as well supplied by a
78 special demurrer or plea as by an answer. The principles in relation to the effect of the special demurrer presented herein bear a close analogy to, if not entirely consistent with, the well-settled rule that a demurrer reaches back to the first error in the pleadings, and judgment may properly be given thereon against the party who committed it.

As was said by Marshall, C. J., in Cooke *v.* Graham, 3 Cranch, 229, 235, "When the whole pleadings are thus spread upon the record by a demurrer, it is the duty of the court to examine the whole and go to the first error."

6 Ency. Pl. & Pr., 326, and authorities there cited.

This general principle is often applied where, as here, the defect pointed out is one of substance and not of mere form.

The end sought to be reached by the demurrer and the intention of the pleader in regard thereto are in substance identical with the object to be accomplished by a special plea.

The object of a plea in equity is to save the parties the expense of a trial upon all the matters alleged in the bill. The purpose of the plea is to reduce the cause or some part of it to a single point, which, if sustained, constitutes a complete defense to the suit, or at least to those portions of the bill to which the plea applies.

In Farley *v.* Kitson, 120 U. S., 303, 314, the court said: "The office of a plea is not like an answer, to meet all the allegations of the bill, nor like a demurrer admitting those allegations, to deny the
equity of the bill, but it is to present some distinct fact which
79 of itself creates a bar to the suit, or to the part to which the plea applied, and thus to avoid the necessity of making the discovery asked for and the expense of going into the evidence at large. Mitford Pl. (4th. ed.), 14, 219, 295; Story Eq. Pl., secs. 649, 652."

In Adams' Equity (8th ed.), 336, it is said: "The principle of a defense by plea is that the defendant avers some one matter of avoidance or denies some one allegation of the bill, and contends that assuming the truth of all the allegations in the bill, or of all except that which is the subject of denial, there is sufficient to defeat the plaintiff's claim. It is applicable, like a demurrer, to any class of objections, but the most usual grounds of plea are: 1, Want of jurisdiction; 2, personal disability in the plaintiff; 3, a decision already made by the court of chancery or by some other court of competent jurisdiction."

See also United States *v.* California and Oregon Land Co., 148 U. S., 31, 39; 16 Ency. Pl. & Pr., 598.

It is true that the steps to be pursued under a special plea are in some respects differently provided for, but inasmuch as the practice here pursued was not objected to on that ground, and the hearing on the special demurrer does not otherwise affect the substantial rights of the parties, the irregularities in the practice (if any exist) may be deemed wholly immaterial.

U. S. *v.* Gerney, 4 Cranch, 333.
Zimmerman *v.* So Relle, 80 Fed., 417, 420.

80 The affirmative facts set forth in the demurrer are shown to exist by an inspection of the records in the original case.

I am of opinion that it is the duty of this court to assume without any proof on either side the facts which are not controverted by the special demurrer or plea to be as set out in the petition; and with reference to the facts which are controverted by the special demurrer the court must assume the facts therein set forth to be as therein stated.

With reference to the questions thus presented, I am of opinion that this court, after the rendition of the decree of 1859, under the provisions of the statutes of 1851, 1860, and 1866, retained jurisdic-

tion of the cause and had the power and authority to reject or approve any survey thereafter made or to otherwise change or modify the decree upon proceedings properly brought before it for that purpose.

If the decree of 1859 was final in the sense that it determined the validity of the grant, it was not a final decree in the full sense of that term because it did not determine the correctness of the survey and could not do so until it was made by the surveyor general and presented to the court. This was accomplished by the orders and decrees of the court made in 1871, and the decree approving the survey must therefore be treated as the final decree of this court.

It is not denied that a survey thereunder was made by the surveyor general of the United States and approved by the court, and that subsequent thereto a patent was issued in conformity therewith; this court was thereby deprived of any further jurisdiction in the premises.

81 From the arguments of counsel it appears that in the earlier stages of the proceedings in the original case, touching the location and boundaries of the grant, the question arose whether the State of California had the superior right by virtue of its sovereignty over the tide and submerged lands in San Francisco bay, or whether such lands should be included in the grants from the Mexican or Spanish governments. The court was called upon to determine whether or not the boundary line of the lands granted to Peralta should or should not be confined to the high-water mark along the bay and estuary. On this point counsel for the petitioner in his brief says: "Our contention here * * * is that when the decree of this court declared the western boundary line of the rancho of San Antonio, as defined in the grant from Mexico, as being a line along the bay of San Francisco, it did not mean a line running through the creeks and sloughs with which this shore of the bay from Contra Costa to Santa Clara is intersected. It did not mean running up those creeks and sloughs and taking the banks of the creeks and sloughs instead of the shores of the bay as being the boundary." This matter is here referred to simply for the purpose of giving a better understanding with reference to the controversy between the parties as to the respective surveys.

The facts set forth in the petition and demurrer present a case which was brought in 1852, under the provisions of the act of Congress of 1851, to establish a claim to the lands of the rancho of San Antonio by virtue of a right or title derived from the Span-

82 ish and Mexican governments. The various steps taken in said case resulted in the decrees of this court entered in 1859 and 1871, and culminated in the issuance of patents to the claimants in 1877. The quantity of land claimed embraced about 46,685 acres, and the amount embraced in the patents was only 44,333 acres, being 2,352 acres, or thereabouts, less than was included in the survey made in 1895. It will thus be seen at a glance that the present proceeding was instituted more than forty years after the decree of 1859, upon which petitioner relied, was rendered, and about 28 years after the rendition of the decree of 1871, upon which the

United States rely, and over twenty years after the close of the proceeding in the original case by the issuance of patents in conformity with the decree of this court of 1871. The patentees, under whom petitioner claims, acquiesced in the correctness of the decree of 1871, and accepted the patents issued thereunder without objection. The proceedings were, so far as the record shows, conducted in good faith, and have remained unchallenged for over twenty years, during which time vast interests have been acquired by other parties in the lands not embraced in the patents. Under such a state of facts it becomes apparent that petitioner must necessarily present a clear case, one entirely free from doubt as to her legal and equitable rights in the premises, in order to obtain any relief.

The patents as issued in effect decide that the lands described therein include all the lands to which the claimants were entitled under the decree and survey. If the decree of 1871 and the
83 survey therein referred to did not embrace all the lands to which the grantors of the petitioner were entitled, they should have taken the necessary steps to have the same set aside or modified. By the issuance of a patent, presumably at their request, the entire proceedings were at an end. The final decree of this court was enforced and patents were issued in accordance therewith. The petitioner could not thereafter invoke the power of this court to annul its action and to proceed under the decree of 1859, which had been changed by the decree of 1871.

The magnitude and importance of the questions herein involved are far-reached in their consequences, as will readily be seen by a careful perusal of the opinions of Mr. Justice Field, of Hoffman, district judge, and Sawyer, circuit judge, in the three cases of The United States *v.* Flint, Throckmorton, and Carpenter, 4 Saw., 42, 87, decided in 1876. These were suits of equity, brought in the United States circuit court of California, to vacate certain patents issued by the United States upon confirmed Mexican grants upon the ground that said patents were obtained by fraud. They were commenced nineteen years after the final decree in the United States district court and eight years after the issuance of the patent by the Government. The act of 1851 is discussed at great length, and a reference thereto is made for the purpose of giving the views ascertained as to its proper construction and effect by the learned judges who participated in the decisions. This court is not, however, called upon under the pleadings before it to discuss the merits of the case. The question as to the sufficiency of the petition to require an answer is alone
84 involved. To determine this question it is only necessary, as before stated, to inquire and decide whether from the averments in the petition and the so-called demurrer the decree of 1859 is the final decree of this court, and whether this court has any jurisdiction to order a patent to be issued as prayed for by petitioner.

The contention of petitioner is that the decree of 1859 is the final decree, and that the court was not possessed of any jurisdiction to thereafter change or alter the same, and that under the provisions of section 8 of the act of 1866 it became the duty of the surveyor general of the United States for California to survey the land as

described in said decree, and that the court had no power or authority to reject or disapprove of such survey, and upon such survey it became the duty of the United States to issue its patent in accordance therewith. An examination of the provisions of the statute and of the authorities upon which petitioner relies fails to convince me of the soundness of this contention.

Sec. 13 of the act of 1851 provides, among other things, that all lands, the claims to which shall be finally decided by the district or Supreme Court, shall be deemed, held, and considered as part of the public domain of the United States, and that "for all claims finally confirmed by the said commissioners, or by the said district or Supreme Court, a patent shall issue to the claimant upon his presenting to the General Land Office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor general of California, whose duty it
85 shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same" (9 U. S. Stat., 631).

The amendatory act of 1860 requires the surveyor general after making a survey in pursuance with the provisions of section 13 of the act of 1851 to give notice of such survey by publication. Sec. 2 of this act provides "that the district courts of the United States for the northern and southern districts of California are hereby authorized, upon the application of any party interested, to make an order requiring any survey of a private land claim within their respective districts to be returned into the district court for examination and adjudication, and on the receipt of said order, duly certified by the clerk of either of said courts, it shall be the duty of the surveyor general to transmit said survey and plat forthwith to the said court."

Section 6 provides "that all surveys and locations heretofore made and approved by the surveyor general of California, which have been returned into the said district courts, or either of them, or in which proceedings are now pending for the purpose of contesting or reforming the same, are hereby made subject to the provisions of this act" (12 U. S. Stat., 33).

Section 8 of the act of July 23, 1866, entitled "An act to quiet land titles in California," upon which petitioner chiefly relied, reads as follows: "That in all cases where a claim to land by virtue of a right or title derived from the Spanish or Mexican authorities has been finally confirmed, and a survey and plat thereof shall
86 not have been requested within ten months from the passage of this act, as provided by sections six and seven of the act of July first, eighteen hundred and sixty-four, 'to expedite the settlement of titles to lands in the State of California,' and in all cases where a like claim shall hereafter be finally confirmed, and a survey and plat thereof shall not be requested, as provided by said sections, within ten months after the passage of this act, or any final confirmation hereafter made, it shall be the duty of the surveyor general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, or such final confirmation hereafter made, to cause the lines of the public

surveys to be extended over such land, and he shall set off in full satisfaction of such grant, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree" (14 U. S. Stat., 218).

What is the jurisdiction, extent, and power of the district court and of the surveyor general under the provisions of these acts?

At the time of the rendition of the decree of 1859 grave doubts existed as to whether or not the district court had the power under that act to reject or approve the survey required to be made by the surveyor general of California.

With reference to the act of 1851, numerous authorities have been cited by the respective counsel, a few of which will be noticed.

In United States *v.* Fossatt, 21 How., 445, 450, where this
87 court, presided over by the learned district judge who rendered the decrees under consideration in the present case, had, in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made, and from this decree the appeal was taken, the Supreme Court said: "It is asserted on the part of the appellants that the district court has no means to ascertain the specific boundaries of a confirmed claim and no power to enforce the execution of its decree, and consequently cannot proceed further in the cause than it has done. The 13th section of the act of 3d March, 1851, makes it the duty of the surveyor general to cause all provate claims which shall be finally confirmed to be accurately surveyed and to furnish plats of the same. It was the practice under the acts of 1824 and 1828 (4 Stat. at L., 52, 284) for the court to direct their mandates specifically to the surveyor designated in those acts; and in the case *Ex parte* Sibbald *v.* United States (12 Pet., 488) the duty of the surveyor to fulfill the decree of the court and the power of the court to enforce the discharge of that duty are declared in similar language in the acts of 1824, 1825, and of 18 -1. The opinion of the court is that the power of the district court over the cause under the acts of Congress does not terminate until the issue of a patent conformably to the decree."

In June, 1859, Judge Hoffman, in United States *v.* Executors of
Folsom, 7 Saw., 602, 612–617, was again called upon to pass
88 upon the question. In his opinion he states: "A decree having been entered at a former term confirming the claim in this case according to the boundaries mentioned in the grant, the appeal therefrom was, by consent of the district attorney, acting under the instructions of the attorney general, dismissed. A motion is now made that the survey be brought into court to be examined and passed upon, and that a final decree be entered confirming to the claimants the lands so surveyed. This motion is made that the court may exercise the jurisdiction which by the recent decision of the Supreme Court in the case of The United States *v.* Fossatt, 21 How., 445, it is supposed to possess." He then reviewed at great length the opinion of the Supreme Court in that case. His views in regard thereto are interesting and instructive. Among other things

he said: "That the Supreme Court have in their opinion laid down principles generally applicable to all cases I think is evident. In the first place, they discuss and decide the point whether this court has by the act of 1851 any authority to decide questions of extent, location, and boundary. Such questions they declare may be 'essential in determining the validity of a claim,' and the power to decide upon 'validity' involves the power to decide upon all questions of boundary. * * * I therefore think that in all cases where a decree of confirmation has been entered and a survey under it has been made on which a patent is about to issue, which survey is objected to as erroneous, it is the duty of the court to direct the survey to be returned to it that it may hear and determine the questions of location and boundary which may be raised."

89 So much for the act of 1851. We now direct our attention to the views expressed by the courts with respect to the amendatory act of 1860.

In United States *v.* Halleck, 1 Wall., 439, 454, Mr. Justice Field, in delivering the opinion of the court, after referring to the case of United States *v.* Fossat, and to the fact that the district court had ordered the new survey to be returned into court, and that proceedings in regard thereto were pending at the time of the passage of the act of June 14, 1860, speaking with reference to said act, said: "Whatever question might be raised as to the jurisdiction of the district court to supervise the survey previous to that act, there can be none since its passage. That act applies not merely to surveys subsequently made, but also to such surveys as had been previously made and approved by the surveyor general and returned into the district court upon objections to their correctness."

In the Fossatt or Quicksilver Mine case, 2 Wall., 649, 712, objections were made to the survey and location on the ground, among others, that the proceedings under the act of 1860 were not judicial, but purely executive and ministerial. It was, therefore, contended that the appeal from the order or the decree of the district court regulating the survey and location ought not to be entertained because the court could only determine the validity of the grant, leaving its survey and location to the executive department of the Government. Mr. Justice Nelson, in delivering the opinion of the court, in reply to these propositions, said: "We need

90 only refer to the opinion of this court, in the present case, the second time it was before us, as presenting a conclusive refutation of these several positions. The fundamental error in the argument is in assuming that the survey and location of the land confirmed are not proceedings under the control of the court rendering the decree, and hence not a part of the judicial action of the court. These proceedings are simply in execution of the decree, which execution is as much the duty of the court and as much within its competency as the hearing of the cause and the rendition of its judgment, as much so as the execution of any other judgment or decree rendered by the court. This power has been exercised by the court ever since the Spanish and French land claims were placed under its jurisdiction.

* * * The powers of the surveyor general under these acts were as extensive and as well defined as under the act of 1851. The act of 1860 did not enlarge or in any way affect his powers. They remained the same as before."

With the view I take of the averments in the pleadings herein, I deem it unnecessary to discuss at any length the provisions of section 8 of the act of 1866, because, if the decree of 1859 is not the *final decree, that act has no application to the proceedings herein.* If the court retained jurisdiction under the acts of 1851, 1860, and 1864 up to the time of the decree of 1871 and thereafter until the patent was issued, that fact disposes of the motion made by the petitioner. The act of 1866 is not, and could not be, applicable to this case, except upon the theory of the petitioner that the decree of 1859 is the final decree, and that no survey was made there-

91 under until 1895, whereas the record shows, as averred in the pleading of the United States, that the decree of 1859 was supplemented and modified upon application of parties interested in some of the lands embraced therein by the decree of 1871. The act of Congress of 1866 may be more general in its character, scope, and effect than the previous acts. It will be observed, however, that the act does not repeal the provisions of the act of 1851, or of the amendatory act of 1860, or of the act of 1864.

But if it should be conceded that petitioner's contention is true, viz., that this court had no jurisdiction, power, or authority over the survey under the act of 1866, and that the Land Department was thereby vested with the exclusive jurisdiction to judicially determine whether or not the survey of 1895 conformed to the decree of 1859, the question would then arise whether this court has any jurisdiction in the present proceedings to compel the Commissioner of the General Land Office, the Secretary of the Interior, or the executive department of the Government to cause a patent to be issued in conformity therewith. Certainly not. If this court had no power to decide questions of locality and survey and the Land Department was vested with exclusive jurisdiction in regard thereto, how could this court in the present proceedings set aside the rulings in the Land Department refusing to grant a patent in conformity with the survey made in 1895?

There are no provisions in the act of 1866 to compel the Commissioner of the General Land Office or the Secretary of the In-

92 terior to approve the survey if it is deemed to be erroneous, or to give it any effect whatever if it is disapproved of for good reasons. For aught that appears in the petition, the survey of 1895 might have been rejected because it did not, in the opinion of the Land Department, conform to the decree, or the patent then applied for may have been refused because the decree of the district court of 1859 was not the final decree, and that the decree of 1871 had been enforced by the issuance of patents in conformity therewith, and that the question of title and boundaries of the grant were thereby finally disposed of. No case has been cited by petitioner's counsel that would authorize this court to order the Government or the officers of the Land Department to issue a patent in accordance

with that survey. None having been found, it will be presumed that none exists. If the patents issued in oursuance of and in conformity with the decree of this court, in 1871, approving the survey made by the surveyor general are, as hereinbefore declared to be, valid, then it necessarily follows that the relief asked for cannot be granted.

In De Guyer *v.* Banning, 167 U. S., 723, 736, *et seq.*, which was an independent action in ejectment, the plaintiffs offered in evidence, in support of their title, a patent which did not grant lands that were excluded from the surveyed claim, and contended that they had the right to go behind both the survey and patent and recover the possession of the lands so excluded, the same as they would have had the right to do if the lands had been included in both the survey and the patent. The court, with reference to this contention, said:

"In our opinion, if those who obtained the decree of con-
93 firmation objected to the survey as not being in conformity with that decree, their objection should have been made known to the district court before the survey was transmitted to the General Land Office, or at least before it was acted upon and made the basis of a patent. The patent was not issued until nearly a year after the survey was made and certified. Under the act of 1851, it was within the power of the district court to have required a survey in exact conformity with its decree. Its jurisdiction over the subject did not end with the decree. The surveyor general was required by the statute (sec. 13) to cause an accurate survey to be made of all private claims finally confirmed under the act of 1851, and to furnish plats of the same. If he misinterpreted the decree; if he made an inaccurate survey, and excluded from it lands that were confirmed to the original claimants, the court had authority to compel the proper execution of its decree." After referring to many decisions of the Supreme Court upon this subject, the court said: "We are of opinion that while it may be true in some cases that an action to recover possession of lands confirmed to a claimant under the act of 1851 can be maintained before a patent is issued, yet a patent issued avowedly in execution of such decree was conclusive between the United States and the claimants, and, until cancelled, it alone determines, in an action to recover possession, the location of the lands that passed under the decree;" and thereafter discussed at great length the effect of a patent; to
94 which opinion reference is here made, and to the authorities there cited.

See also De Guyer *v.* Banning, 91 Cal., 400, 402, and authorities there cited.

In Chipley *v.* Farris, 45 Cal., 527, 538, which involved the title to lands alleged to have been covered by a Mexican grant, and in respect to which there were proceedings under the act of Congress of March 3, 1851, it was contended on one side that the patent was conclusive upon all points of the case and put an end to all questions of lines and boundaries; on the other side it was insisted that the confirmation of the claim gave the claimant a perfect title, and

that he could not be divested of title to any lands embraced in the decree of confirmation by a patent that excluded a portion of them. In answering these contentions, the court said: "A patent issued under the act of 1851 is, as has often been held by this court, the final act in proceedings instituted for the confirmation of the claim of the patentee to land which had been granted by the former Government, and for the segregation of such land from the public lands of the United States, and it is a record which binds both the Government and the claimant, and cannot be attacked by either party except by direct proceedings instituted for that purpose (Leese *v.* Clark, 18 Cal., 535). While it stands, the claimant or those deriving title through him will not be permitted to aver that the claim comprised other or different lands from those mentioned in the patent. Such being the nature and effect of the patent, the evidence offered by the plaintiffs to prove that the patent
95 was void was properly excluded. It is unnecessary, in order to give effect to a patent, to show an acceptance of it by the patentee. The general rule is that a patent takes effect upon its being issued, and it is unnecessary to show a delivery to or an acceptance by the patentee. * * * It is contended by the plaintiffs that the survey, which is incorporated into the patent, does not accord with the decree of confirmation, and that they are entitled to rely upon the decree, which is also incorporated into the patent, for title to lands within the decree, but not within the survey. This position cannot be maintained consistently with the views already expressed as to the nature and effect of the patent. The patent purports to convey the lands described in the survey, and its scope cannot be extended, nor, on the other hand, can it be limited by showing that the decree comprised a greater or less area than the survey. Nor can the claimant, after admitting, as he must, the conclusive effect of the patent, make out title to lands not conveyed by the patent, by the production of the proceedings which culminated in the patent. The patent, while it remains in force, conclusively determines what lands the claimant was entitled to under his claim and the decree of confirmation. The claimant can neither reform the patent nor show that it is in any respect incorrect in an action of ejectment."

The merits of this case have been settled by the final decree of this court, and the patents issued in conformity therewith. If the present motion could be sustained and a new order made in
96 disregard of the final decree of this court, it would open up a new field of inquiry and create future litigation that would be endless. As was said by Mr. Justice Field, in United States *v.* Flint, *supra*, "Of course, under such a system of procedure, the settlement of land titles in the State would be postponed indefinitely, and the industries and improvements, which require for their growth the assured possession of land, would be greatly paralyzed."

The obligation resting upon the Government concerning the Mexican and Spanish grants are purely political in their character, and are settled and discharged in such manner and upon such terms as they deem expedient. To quote the opinion of Mr. Justice Field,

in Beard *v.* Federy, 3 Wall., 478, 492: "By the act of March 3d, 1851, they have declared the manner and the terms on which they will discharge this obligation. They have there established a special tribunal, before which all claims to land are to be investigated; required evidence to be presented respecting the claims; appointed law officers to appear and contest them on behalf of the Government; authorized appeals from the decisions of the tribunal, first to the district and then to the supreme court, and designated officers to survey and measure off the land when the validity of the claims is finally determined. When informed by the action of its tribunals and officers that a claim asserted is valid and entitled to recognition, the Government acts and issues its patent to the claimant. This instrument is therefore record evidence of the action of the Government upon the title of the claimant. By it the Government declares that
97 the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former Government, and is correctly located now, so as to embrace the premises as they are surveyed and described. As against the Government this record, so long as it remains unvacated, is conclusive, and it is equally conclusive against parties claiming under the Government by title subsequent. It is in this effect of the patent as a record of the Government that its security and protection chiefly lie."

The presumption of the law always is that the officers of the executive department of the Government, who are specially charged with the supervision of matters in relation to the issuance of patents, did their duty, and if, under any circumstances, their action can be sustained, it must be presumed that such circumstances existed.

I am of opinion that it is the duty of this court, under the facts herein presented, to decline to review the action of the executive department in refusing to issue a patent under the survey of 1895, and to decline to grant the motion of the petitioner to compel them so to do.

The affirmative facts set forth in the demurrer constitute a complete defense and bar to the relief prayed for by petitioner. The entire matter is *res judicata*.

From the views herein expressed and conclusions reached, it necessarily follows that the demurrer should be sustained and the petition dismissed. It is so ordered.

Endorsed: Filed Jan. 29, 1900. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

98 *Order Denying Motion.*

In the District Court of the United States for the Northern District of California.

THE UNITED STATES OF AMERICA
vs.
VICENTE PERALTA ET AL.; MARY E. H. Gwin and Miers F. Truett, Intervenors. } No. 100. Land Cases.

The motion of Mary E. H. Gwin and Miers F. Truett, intervenors, for a rule or order commanding the United States to issue, or cause to be issued, to the claimants, confirmees, Antonio Peralta, Vicente Peralta, Ignacio Peralta, and Domingo Peralta, a patent for the lands of the rancho of San Antonio in conformity with the approved official plat of the survey of said rancho now on file in the Department of the Interior, in execution of the decree of this court herein, made and entered on the 30th day of November, 1859 (filed December 1, 1859), having come on to be heard in its regular order on the calendar on the 30th day of April, in the year 1900, before the Hon. Thomas P. Hawley, a district judge of the United States, upon the verified petition of the intervenors and the demurrer of the United States thereto;

And having been argued in support of the demurrer by Frank L. Coombs, Esquire, United States attorney, and in support of the motion by James T. Boyd, Esquire, and William H. Fifield, Esquire, attorneys for the intervenors, and having been submitted for consideration and decision;

99 And this court, after due consideration had thereon, having, on the 28th day of May, in the year 1900, rendered its decision and filed its written opinion thereon:

Now, on this 28th day of May, in the year 1900, on motion of Frank L. Coombs, Esquire, United States attorney, it is by court now here ordered, adjudged, and decreed that the said demurrer be, and the same is hereby, sustained, and that the said motion be, and the same is hereby, denied, and the petition dismissed.

THOMAS P. HAWLEY, *Judge.*

Endorsed: Entered in Book No. 3, Judg'ts and Decrees, page 533. Filed Jul- 30, 1900. Geo. E. Morse, clerk, by John Fouga, deputy clerk.

100 *Notice of Motion for Appeal.*

In the District Court of the United States in and for the Northern District of California.

THE UNITED STATES OF AMERICA
vs.
VICENTE PERALTA ET AL. } No. 100. Land Cases.

SIR: You will please take notice that we shall apply to the district court of the United States for the northern district of Califor-

nia to allow and grant to the intervenors and to each of them an appeal to the Supreme Court of the United States from the order entered on their motion on the thirtieth day of July, in the year 1900, on such security for costs as the said court shall prescribe.

And that this motion will be made on Thursday, the 16th day of August, in the year 1900, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated August 13th, 1900.

BOYD & FIFIELD,
Attorneys for Intervenors.

Frank L. Coombs, Esq., attorney for the United States.

Endorsed: Filed August 16th, 1900. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

101 *Order Granting Appeal.*

At a stated term of the district court of the United States for the northern district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 20th day of August, A. D. 1900.

Present: The Honorable James H. Beatty, United States district judge for the district of Idaho, presiding.

(Number and Title of Case.)

In this case the motion of Mrs. Mary E. H. Gwin and Miers F. Truett, intervenors, for an order allowing an appeal to the Supreme Court of the United States this day came on regularly for hearing, and after hearing James T. Boyd, Esq., attorney for said intervenors, in support of said motion, and Frank L. Coombs, Esq., United States attorney for the northern district of California, in opposition thereto, it is by the court ordered that said appeal to the Supreme Court of the United States from the order made and entered by the court herein on the thirtieth (30) day of July, in the year 1900, be, and the same is hereby, allowed and granted to the said intervenors and to each of them upon their or either of them giving bond on appeal as security for costs in the district and supreme courts, in case the said order of said district court shall be affirmed, in the sum of three hundred dollars ($300.00).

102 *Bond on Appeal.*

Know all men by these presents that we, Mary E. H. Gwin and Miers F. Truett, as principals, and A. D. Grimwood and John Benson, as sureties, are held and firmly bound unto the United States of America in the just and full sum of three hundred dollars, to be paid to the said The United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this twenty-first day of August, in the year nineteen hundred.

Whereas the above-bounden Mary E. H. Gwin and Miers F. Truett have prosecuted an appeal to the Supreme Court of the United States to reverse the order and decree rendered by the district court of the United States for the northern district of California on the 30th day of July, in the year 1900, in a certain proceeding pending in said court wherein Vicente Peralta, Antonio Peralta, Domingo Peralta, and Ignacio Peralta are parties of the one part — The United States of America is the party of the other part, which order and decree was rendered on a motion of the said Gwin and Truett, intervenors, intervening for their interest under the said parties, Vicente Peralta, Antonio Peralta, Domingo Peralta, and Ignacio Peralta, against the said intervenors:

Now, the condition of the above obligation is such that if they, the said Gwin and Truett, or either of them, shall prosecute their appeal to effect and shall answer all costs in the said district and supreme courts in case the said order and decree of the district court shall be affirmed, then the above obligation to be void; else to remain in full force and virtue.

103

——— ———.

MIERS F. TRUETT. [SEAL.]
JOHN BENSON. [SEAL.]
A. D. GRIMWOOD. [SEAL.]

Witness to signature of Mrs. Gwin:

——— ———.

Witness to signature of M. F. Truett:
B. B. TRUETT.

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

A. D. Grimwood and John Benson, being duly sworn, each for himself, deposes and says that he is a householder in said district, and is worth the sum of three hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

A. D. GRIMWOOD.
JOHN BENSON.

Subscribed and sworn to before me this 6th day of September, 1900.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

Endorsed: Filed Sep. 7, 1900. Geo. E. Morse, clerk. Form of bond & sufficiency of sureties approved. John J. De Haven, judge.

104 *Appeal to Supreme Court.*

THE UNITED STATES, Appellants,
vs.
VICENTE PERALTA & DOMINGO PERALTA.

To the honorable the Supreme Court of the United States:

The appeal of The United States, the above appellants, by A. Glassell, acting district attorney of the United States for the northern district of California, respectfully sheweth that on the — day of ——, A. D. 1851, the above-named appellees filed their claim before the board of commissioners for ascertaining and settling the private land claims in the State of California under the act of Congress of March 3d, 1851, praying for their confirmation of said claim.

That a final decree was made by the said board of commissioners, wherein it was, in substance, adjudged that the said appellees had not a good and lawful title to all of the lands described in said claim.

That after such final decree the said cause, together with the said decree and all the pleadings, proceedings, depositions, and evidence therein, was duly certified and removed into the district court of the United States for the northern district of California, and an appeal in all respects duly taken from the said board of commissioners to the said district court, and the said cause being removed into the said district court and issue being joined upon the petition filed in the
105 said court by the said appellees and the answer of the said United States by the district attorney of the United States, the said cause was tried anew upon the said pleadings, and the pleadings and evidence removed from the said board, as aforesaid, and such further evidence as was taken by order of the said district court, and such proceedings were thereupon had in the said district court that afterwards, to wit, on the 26th day of January, A. D. 1855, the said district court made a final decree whereby it was, in substance, adjudged that the said appellees have a good and valid title for the place called San Antonio to the whole extent of its boundaries particularly set out in the said decree of the said district court, which said decree of the said district court is, as the said district attorney of the United States believes, erroneous & ought to be reversed.

Whereupon the said district attorney, in behalf of the said United States, appeals from said decree of the said district court to the Supreme Court of the United States, and respectfully prays that the said decree of the said district court and all the pleadings, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said district court may be reversed and a decree made rejecting

the said claim with costs against the said appellees, or such other decree as to the said Supreme Court shall seem just.

San Francisco, January 26, 1855.

A. GLASSELL,
Acting District Attorney of the United States, &c.

Endorsed: Filed Jan'y 26, 1855. Jno. A. Monroe, clerk.

106 *Request to Make Transcript.*

United States District Court, Northern District of California.

THE UNITED STATES OF AMERICA
vs.
VICENTE PERALTA and Others. } Land Case No. 100.

Appeal of Mary E. H. Gwin and Miers F. Truett.

Record on appeal.

1900.
Mar. 29. Motion papers.
April —. Demurrer.
May —. Opinion on this hearing of Judge Hawley.
Jan'y 29. Opinion of Judge Hawley on former hearing.
July 30. Order denying motion.
Aug. 16. Notice of motion for appeal.
20. Order granting appeal.
Sep. 7. Bond on appeal.
Citation.
1855.
Jan. 26. Notice by attorney general of appeal to Supreme Court.

BOYD & FIFIELD,
Attorneys-at-law, 324 *Pine St., San Francisco, Cal.*

Clerk U. S. dist. court, northern dist. of California:

Please send copy of above papers as constituting record on appeal.

Yours, &c.,

JAMES T. BOYD,
Of Counsel for Appellants.

Endorsed: Filed September 14th, 1900. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

107 I, George E. Morse, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing and hereunto annexed one hundred and six (106) pages, numbered from 1 to 106, inclusive, contain a full, true, and correct transcript of the record in said district court in the case entitled "The United States *vs.* Vicente Peralta," No. 100 (L.C. N. D.), made up pursuant to the request of the attorney for appellants. I

further certify that the cost of said record, amounting to $52.40, has been paid by appellants.

Attest my hand and the seal of said district court this 2nd day of October, A. D. 1900.

[Seal of the U. S. District Court, Northern Dist. of California.]

G. E. MORSE, *Clerk.*

Endorsed on cover: File No., 17,926. N. California D. C. U. S. Term No, 441. Mary E. H. Gwin and Miers F. Truett, appellants, *vs.* The United States. Filed October 10th, 1900.